

CALIFORNIA INSTITUTE OF TECHNOLOGY JET PROPULSION LABORATORY

GENERAL PROVISIONS: FIXED-PRICE NON-RESEARCH AND DEVELOPMENT CONTRACT

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GENERAL PROVISIONS CANNOT BE ALTERED WITHOUT NASA APPROVAL

The following attachments are incorporated into the General Provisions. Submission of an offer and beginning performance constitute certification and recertification per Form JPL 2892.

Release of Information, Form JPL 1737

Notification to Prospective Subcontractors of JPL's Ethics Policies and Anti-Kickback Hotline, Form JPL 2385

Certifications, Form JPL 2892

Asbestos Notification JPL, Form 2895

Notice of Potential Tax Withholding

ADDITIONAL DATA REQUIREMENTS

[CT, FP-NR&D, FP-R&D, CREI – 09/04] [FAR 52.227-16 - 06/87]

- (a) In addition to the data (as defined in the "Rights in Data - General" Article or other equivalent included in this Subcontract) specified elsewhere in this Subcontract to be delivered, JPL may at any time during Subcontract performance or within a period of three years after acceptance of all items to be delivered under this Subcontract, order any data first produced or specifically used in the performance of this Subcontract.
- (b) The "Rights in Data - General" Article or other equivalent included in this Subcontract is applicable to all data ordered under this "Additional Data Requirements" Article. Nothing contained in this Article shall require the Subcontractor to deliver any data the withholding of which is authorized by the "Rights in Data - General" Article or other equivalent Article of this Subcontract, or data which are specifically identified in this Subcontract as not subject to this Article.
- (c) When data are to be delivered under this Article, the Subcontractor will be compensated for converting the data into the prescribed form, for reproduction, and for delivery.
- (d) The Contracting Officer through JPL may release the Subcontractor from the requirements of this Article for specifically identified data items at any time during the three-year period set forth in paragraph (a) above.

AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES

[CT, FP-NR&D, FP-R&D, CIS, T&MC, LH/T&M, FPC, CREI, A-E, RSA – 09/04] [FAR 52.222-36 - 06/98]

(This Article applies to Subcontracts that exceed \$10,000, unless the work is performed outside the United States by employees recruited outside the United States.)

Incorporate by reference FAR 52.222-36, Affirmative Action for Workers with Disabilities Handicapped Workers (29 U.S.C. 793).

ANTI-KICKBACK PROCEDURES

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A-E, RSA – 09/04] [FAR 52.203-7 – 07/95]

- (a) Definitions.
 - (1) "Kickback," as used in this Article, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime Subcontractor, prime Subcontractor employee, First-tier Subcontractor, or First-tier Subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a First-tier Subcontract relating to a prime contract.
 - (2) "Person," as used in this Article, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.
 - (3) "Prime contract," as used in this Article, means a Subcontract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.
 - (4) "Prime Contractor," as used in this Article, means a person who has entered into a prime contract with the United States.
 - (5) "Prime Contractor employee," as used in this Article, means any officer, partner, employee, or agent of a prime contractor.
 - (6) "First-tier Subcontract," as used in this Article, means a Subcontract or contractual action entered into by a prime Subcontractor or First-tier Subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.
 - (7) "First-tier Subcontractor," as used in this Article, (i) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a First-tier Subcontract entered into in connection with such prime contract, and (ii) includes any person who offers to furnish or furnishes general supplies to the prime contractor or a higher-tier First-tier Subcontractor.
 - (8) "First-tier Subcontractor employee," as used in this Article, means any officer, partner, employee, or agent of a First-tier Subcontractor.

- (b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from:
- (1) Providing or attempting to provide or offering to provide any kickback;
 - (2) Soliciting, accepting, or attempting to accept any kickback; or
 - (3) Including, directly or indirectly, the amount of any kickback in the Subcontract price charged by a prime Contractor to the United States or in the Subcontract price charged by a First-tier Subcontractor to a prime contractor or higher-tier subcontractor.
- (c)
- (1) When the Subcontractor has reasonable grounds to believe that a violation described in paragraph (b) of this Article may have occurred, the Subcontractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.
 - (2) The Subcontractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this Article.
 - (3) The Institute may (i) offset the amount of the kickback against any monies owed under the Subcontract and/or (ii) direct that the Subcontractor withhold, from sums owed a First-tier Subcontractor under the Subcontract, the amount of any kickback. JPL may order that monies withheld under subdivision (c)(3)(ii) of this Article be paid over to JPL unless JPL has already offset those monies under subdivision (c)(3)(i) of this Article. In either case, the Subcontractor shall notify JPL when the monies are withheld.
 - (4) The Subcontractor agrees to incorporate the substance of this Article, including this subparagraph (c)(4), in all First-tier Subcontracts under this Subcontract.

ASBESTOS NOTIFICATION

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A-E – 09/04]

(This Article applies if any of the Subcontract effort will be performed in JPL-Pasadena buildings. Work performed outside the United States is exempt from the requirements of this Article.)

Subcontractor acknowledges receipt of the attached "Asbestos Notification," form JPL 2895, identifying JPL buildings containing asbestos and agrees to distribute the Notice to all its personnel prior to their commencing work in such buildings. Subcontractor agrees to coordinate with the JPL Safety Operations Section for special asbestos handling instructions to be given to all Subcontractor's personnel, including First-tier Subcontractors' personnel, prior to their commencing work, if any, which could disturb asbestos in JPL-controlled buildings. The substance of this Article will be included in all First-tier Subcontracts issued under this Article for work performed in JPL-Pasadena buildings.

ASSIGNMENT, NOVATION AND TRANSFER

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A-E CIS– 09/04] [FAR 52.244-2(m) – 08/98]

This Subcontract may be assigned, novated, or transferred to a successor-in-interest, a successor Contractor to operate the Jet Propulsion Laboratory, or the Government.

ASSIGNMENT OF RIGHTS AND DELEGATION OF DUTIES

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A-E, RSA – 09/04] [FAR 52.232-23(a) – 01/86]

- (a) The Subcontractor may assign its rights to be paid amounts due or to become due as a result of the performance of this Subcontract to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence.
- (b) Any such assignment or reassignment shall be subject to the following conditions:
- (1) Any assignment or reassignment authorized under this provision shall cover all amounts payable under this Subcontract, and not paid as of (i) the effective date of assignment or (ii) the date JPL receives written notice of the assignment, whichever is later.
 - (2) No assignment may be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this Subcontract.

- (3) Two copies of the notice of assignment, signed by the Subcontractor, shall be furnished to JPL, Attn: Accounts Payable.
 - (4) If a party other than the Subcontractor provides JPL with a notification that the amount due or to become due under this Subcontract has been assigned and that payment is to be made to the claimed assignee, JPL may withhold any payments which are due and payable under the Subcontract until JPL is furnished with either (i) verification or denial of assignment from the Subcontractor or (ii) reasonable proof that the assignment has been made.
 - (5) The Subcontractor shall not furnish or disclose to any assignee under this Subcontract any classified document (which term includes this Subcontract if access to classified material is authorized under this Subcontract) or information pertaining to classified work under this Subcontract unless JPL authorizes such action in writing.
 - (6) No assignment may be made which includes, either specifically or by implication, any delegation of the Subcontractor's duty to perform the services or provide the supplies required by this Subcontract unless such assignment and delegation is consented to by JPL in accordance with the provisions of paragraph (c) below.
- (c) The Subcontractor is prohibited, without prior written JPL consent, from delegating any part of the duties required of it by this Subcontract; provided, however, that nothing contained herein shall be deemed to prohibit the Subcontractor from placing purchase orders and First-tier Subcontracts, subject, however, to the provision of this Subcontract entitled "First-tier Subcontracts." Delegation of duties without such consent is void.

AUDITS AND RECORDS – NEGOTIATION

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A-E, RSA – 09/04] [FAR 52.215-2 – 06/99]

(This provision is not applicable for procurements of \$100,000 or less, for commercial items, or for utility services at rates not exceeding those established to apply uniformly to the general public, plus any applicable reasonable connection charge.)

- (a) As used in this Article, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.
- (b) Examination of Costs. If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable Subcontract, or any combination of these, the Subcontractor shall maintain and the Contracting Officer, or an authorized representative of the Contracting Officer, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this Subcontract. This right of examination shall include inspection at all reasonable times of the Subcontractor's plants, or parts of them, engaged in performing the Subcontract.

If this is a facilities acquisition, the obligations and rights specified in this paragraph shall extend to the use of, and charges for the use of, the facilities under this Subcontract.

- (c) Cost or Pricing Data. If the Subcontractor has been required to submit cost or pricing data in connection with pricing action relating to this Subcontract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Subcontractor's records, including computations and projections, related to:
 - (1) The proposal for the Subcontract, First-tier Subcontract, or modification;
 - (2) The discussions conducted on the proposal(s), including those related to negotiating;
 - (3) Pricing of the Subcontract, First-tier Subcontract, or modification; or
 - (4) Performance of the Subcontract, First-tier Subcontract, or modification.
- (d) Comptroller General.
 - (1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Subcontractor's directly pertinent records involving transactions related to this Subcontract or a First-tier Subcontract hereunder.

- (2) This paragraph (d) may not be construed to require the Subcontractor or First-tier Subcontractor to create or maintain any record that the Subcontractor or First-tier Subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.
- (e) Reports. If the Subcontractor is required to furnish cost, funding, or performance reports, the Contracting Officer or an authorized representative of the Contracting Officer shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating (i) the effectiveness of the Subcontractor's policies and procedures to produce data compatible with the objectives of these reports and (ii) the data reported.
- (f) Availability. The Subcontractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this Article, for examination, audit, or reproduction, until three years after final payment under this Subcontract, or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of FAR, and any corresponding implementing or supplementing provisions in the NFS, or for any longer period required by statute or by other Articles of this Subcontract. In addition:
 - (1) If this Subcontract is completely or partially terminated, the Subcontractor shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement; and
 - (2) The Subcontractor shall make available records relating to appeals under the "Disputes" Article or to litigation or the settlement of claims arising under or relating to this Subcontract until such appeals, litigation, or claims are finally resolved.
- (g)
 - (1) The Subcontractor shall insert all of the provisions of this Article, including this paragraph (g), in all First-tier Subcontracts under this Subcontract that exceed \$100,000, and:
 - (A) That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these;
 - (B) For which cost or pricing data are required; or
 - (C) That require the First-tier Subcontractor to furnish reports as discussed in paragraph (e) of this clause.
 - (2) The Article may be altered only as necessary to identify properly the contracting parties and the Contracting Officer under the Government Prime Contract.
- (h) If this is a cost-reimbursement Subcontract with an educational or other nonprofit institution, the provisions of OMB Circular No. A-133, "Audits of Institutions of Higher Learning and Other Nonprofit Institutions," apply to this Subcontract.

AUTHORITY OF JPL REPRESENTATIVES

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A-E, RSA – 09/04]

- (a) No request, notice, authorization, direction or order received by the Subcontractor and issued either pursuant to a provision of this Subcontract, to a provision of any document incorporated in this Subcontract by reference, or otherwise, shall be binding upon either the Subcontractor or the Institute unless issued or ratified in writing by the JPL Subcontracts Manager, the Manager, Acquisition Division, JPL, or by representative(s) designated in writing by either of them. Designations of authorized representatives shall define the scope and limitations of the authorized representatives' authorities.
- (b) The Subcontractor shall immediately notify, in writing, the JPL Subcontracts Manager, or the Manager, Acquisition Division, JPL, whenever a request, notice, authorization, direction, or order has been received from a representative of JPL other than the JPL Subcontracts Manager, or the Manager, Acquisition Division, JPL, which, but for the lack of authorization on the part of the issuing JPL representative, would: (i) effect a change within the meaning of the "Changes" Article; (ii) increase or decrease the Subcontract amount or amount allotted to this Subcontract; or (iii) otherwise be the basis for assertion of a claim by the Subcontractor under any provision of the Subcontract.

AUTHORIZATION AND CONSENT

[FP-NR&D, FPC, RSA – 09/04] [FAR 52.227-1 – 07/95]

- (a) The Government authorizes and consents to all use and manufacture, in performing this Subcontract or any First-tier Subcontract at any tier, of any invention described in and covered by a United States patent (1) embodied in the structure or composition of any article the delivery of which is accepted by JPL under this Subcontract or (2) used in machinery, tools, or methods whose use necessarily results from compliance by the Subcontractor or a First-tier Subcontractor with (i) specifications or written provisions forming a part of this Subcontract or (ii) specific written instructions given by JPL directing the manner of performance. The entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clause, if any, included in this Subcontract or any First-tier Subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.
- (b) The Subcontractor agrees to include, and require inclusion of, this Article, suitably modified to identify the parties, in all First-tier Subcontracts at any tier for supplies or services (including construction, architect-engineer services, and materials, supplies, models, samples and design or testing services expected to exceed \$100,000); however, omission of this Article from any First-tier Subcontract, under or over \$100,000, does not affect this authorization and consent.

BANKRUPTCY

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A-E – 09/04] [FAR 52.242-13, 07/95]

In the event the Subcontractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Subcontractor agrees to furnish, by certified mail or electronic commerce method authorized by the Subcontract, written notification of the bankruptcy to the JPL Subcontracts Manager responsible for administering the Subcontract. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of JPL Subcontract numbers for all JPL Subcontracts against which final payment has not been made. This obligation remains in effect until final payment under this Subcontract.

BUY AMERICAN ACT – SUPPLIES

[CT, FP-NR&D, FP-R&D, CIS, T&MC, LH/T&M, CREI – 09/04] [FAR 52.225-1 - 05/02]

(This Article applies to supply Subcontracts exceeding \$2,500 and to Subcontracts for services which involve the furnishing of supplies when the supply portion of the Subcontract exceeds \$2,500.)

Incorporate by reference FAR 52.225-1, Buy American Act - Supplies.

CHANGES – FIXED-PRICE

[FP-NR&D, FP-R&D, RSA – 09/04] [FAR 52.243-1, Alt. V – 08/87; FAR 52.243-6 – 04/84]

- (a) JPL may at any time, by written Subcontract Unilateral Modification and without notice to the sureties, if any, make changes within the general scope of this Subcontract in any one or more of the following:
 - (1) Drawings, designs, or specifications.
 - (2) Method of shipment or packing.
 - (3) Place of inspection, delivery, or acceptance.
 - (4) Description of services to be performed.
 - (5) Time of performance (i.e., hours of the day, days of the week, etc.).
 - (6) Place of performance of the services.
- (b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this Subcontract, whether or not changed by the Modification, JPL shall make an equitable adjustment in (i) the Subcontract price, the delivery or completion schedule, or both; and (ii) other affected terms of the Subcontract, and shall modify the Subcontract accordingly.
- (c) The Subcontractor must assert its right to an adjustment under this Article within 30 days from the date of receipt of the Modification. However, if JPL decides that the facts justify it, JPL may receive and act upon a proposal submitted before final payment of the Subcontract.
- (d) JPL may require change order accounting when deemed necessary. The Subcontractor, for each change or series of related changes, shall maintain separate accounts, by job order or other suitable accounting procedure,

of all incurred segregable, direct costs (less allocable credits) of work, both changed and not changed, allocable to the change. The Subcontractor shall maintain such accounts until the parties agree to an equitable adjustment for the changes ordered by JPL.

- (e) If the Subcontractor's proposal includes the cost of property made obsolete or excess by the change, JPL shall have the right to prescribe the manner of the disposition of the property.
- (f) Nothing in this Article shall excuse the Subcontractor from proceeding with the Subcontract as modified.

COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT

[FP-NR&D, FP-R&D, LH/T&M, T&MC, FPC, A-E - 09/04]

(Work performed outside the United States is exempt from the requirements of this Article.)

- (a) Subcontractor agrees to comply with the Americans with Disabilities Act (42 U.S.C. 12101, et. seq.) and all implementing regulations.
- (b) Subcontractor agrees that it will be responsible to the Government and the Institute for, and will indemnify and hold harmless the Government and the Institute, its trustees, officers, and employees from any loss, cost, damage, expense or liability or suit therefore, by reason of actual or alleged property damage or personal injury of whatever kind or character, arising out of, or in connection with performance of the requirements of paragraph (a) above by the Subcontractor or any of its First-tier Subcontractors, however the same may be caused, excepting only such loss, cost, damage, expense or liability attributable to the sole or contributory active negligence of the Government or of the Institute, its trustees, officers, or employees.
- (c) Subcontractor agrees to insert this Article, including (c), in all First-tier Subcontracts and purchase orders hereunder.

CROSS-WAIVERS OF LIABILITY FOR SPACE SHUTTLE SERVICES, NASA EXPENDABLE LAUNCH VEHICLE (ELV) LAUNCHES, AND FOR SPACE STATION ACTIVITIES

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M – 09/04] [NFS 1852.228-72 - 09/93; 1852.228-78 – 9/93; 1852.228-76 – 12/94]

(This Article is applicable if the Subcontract value is \$100,000 or more.)

The Subcontractor understands that the work performed under this Subcontract may be in support of "Protected Space Operations" as defined in the three paragraphs (b)(5) under Part A, Part B, and Part C below, and therefore agrees to all three cross-waiver provisions set forth below. The Subcontractor shall incorporate this Article into First-tier Subcontracts that are for \$100,000 or more.

Part A. CROSS-WAIVER OF LIABILITY FOR SPACE SHUTTLE SERVICES

- (a) As prescribed by regulation (14 C.F.R. Part 1266), NASA agreements involving Space Shuttle services are required to contain broad cross-waivers of liability among the parties and the parties' related entities to encourage participation in space exploration, use, and investment. The purpose of this provision is to extend this cross-waiver requirement to Subcontractors and related entities under their Subcontracts. This cross-waiver of liability shall be broadly construed to achieve the objective of encouraging participation in space activities.
- (b) As used in this provision, the term:
 - (1) "Subcontractors" and "First-tier Subcontractors" include suppliers of any kind.
 - (2) "Damage" means:
 - (A) Bodily injury to, or other impairment of health of, or death of, any person;
 - (B) Damage to, loss of, or loss of use of any property;
 - (C) Loss of revenue or profits; or
 - (D) Other direct, indirect, or consequential damage;
 - (3) "Party" means a person or entity that signs an agreement involving a Space Shuttle service;
 - (4) "Payload" means any property to be flown or used on or in the Space Shuttle; and
 - (5) "Protected Space Operations" means all Space Shuttle and payload activities on Earth, in outer space, or in transit between Earth and outer space performed in furtherance of an agreement involving Space Shuttle

services or performed under this Subcontract. "Protected Space Operations" excludes activities on Earth which are conducted on return from space to develop further a payload's product or process except when such development is for Space Shuttle-related activities necessary to implement an agreement involving Space Shuttle services or to perform this Subcontract. It includes, but is not limited to:

- (A) Research, design, development, test, manufacture, assembly, integration, operation, or use of the Space Shuttle, transfer vehicles, payloads, related support equipment, and facilities and services;
- (B) All activities related to ground support, test, training, simulation, or guidance and control equipment and related facilities or services.

(6) "Related entity" means:

- (A) A party's Subcontractors or First-tier Subcontractors at any tier;
- (B) A party's users or customers at any tier; or
- (C) A Subcontractor or First-tier Subcontractor of a party's user or customer at any tier.

(c)

- (1) The Subcontractor agrees to a waiver of liability pursuant to which the Subcontractor waives all claims against any of the entities or persons listed in paragraphs (c)(1)(A) through (c)(1)(C) of this provision based on damage arising out of Protected Space Operations. This waiver shall apply only if the person, entity, or property causing the damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. The waiver shall apply to any claims for damage, whatever the legal basis for such claims, including but not limited to delict (a term used in civil law countries to denote a class of cases similar to tort) and tort (including negligence of every degree and kind) and Subcontract, against:
 - (A) Any party other than the Government;
 - (B) A related entity of any party other than the Government; and
 - (C) The employees of any of the entities identified in (c)(1)(A) and (c)(1)(B) above.
- (2) The Subcontractor agrees to extend the waiver of liability as set forth in paragraph (c)(1) of this provision to First-tier Subcontractors at any tier by requiring them, by Subcontract or otherwise, to agree to waive all claims against the entities or persons identified in paragraphs (c)(1)(A) through (c)(1)(C) of this provision.
- (3) For avoidance of doubt, this cross-waiver includes a cross-waiver of liability arising from the Convention on International Liability for Damage Caused by Space Objects (March 29, 1972, 24 United States Treaties and other International Agreements (U.S.T.) 2389), Treaties and Other International Acts Series (T.I.A.S.) No. 7762 in which the person, entity, or property causing the damage is involved in Protected Space Operations, and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations.
- (4) Notwithstanding the other provisions of this provision, this waiver of liability shall not be applicable to:
 - (A) Claims between any party and its related entities or claims between any party's related entities (e.g., claims between the Government and the Subcontractor are included within this exception);
 - (B) Claims made by a natural person, his/her estate, survivors, or subrogees for injury or death of such natural person;
 - (C) Claims for damage caused by willful misconduct; and
 - (D) Intellectual property claims.
- (5) Nothing in this section shall be construed to create the basis for a claim or suit where none would otherwise exist.

PART B. CROSS-WAIVER OF LIABILITY FOR NASA EXPENDABLE LAUNCH VEHICLE (ELV) LAUNCHES

- (a) As prescribed by regulation (14 C.F.R. Part 1266), NASA agreements involving ELV launches are required to contain broad cross-waivers of liability among the parties and the parties' related entities to encourage participation in space exploration, use, and investment. The purpose of this provision is to extend this cross-waiver requirement to Subcontractors and First-tier Subcontractors as related entities of NASA. This cross-waiver of liability shall be broadly construed to achieve the objective of encouraging participation in space activities.
- (b) As used in this provision, the term:
- (1) "Subcontractors" and "First-tier Subcontractors" include suppliers of any kind.
 - (2) "Damage" means:
 - (A) Bodily injury to, or other impairment of health of, or death of, any person;
 - (B) Damage to, loss of, or loss of use of any property;
 - (C) Loss of revenue or profits; or
 - (D) Other direct, indirect, or consequential damage;
 - (3) "Party" means a person or entity that signs an agreement involving an ELV launch;
 - (4) "Payload" means any property to be flown or used on or in the ELV; and
 - (5) "Protected Space Operations" means all ELV and payload activities on Earth, in outer space, or in transit between Earth and outer space performed in furtherance of an agreement involving an ELV launch or performed under the Subcontract. "Protected Space Operations" excludes activities on Earth which are conducted on return from space to develop further a payload's product or process except when such development is for ELV-related activities necessary to implement an agreement involving an ELV launch or to perform the Subcontract. It includes, but is not limited to:
 - (A) Research, design, development, test, manufacture, assembly, integration, operation, or use of ELVs, transfer vehicles, payloads, related support equipment, and facilities and services;
 - (B) All activities related to ground support, test, training, simulation, or guidance and control equipment and related facilities or services.
 - (6) "Related entity" means:
 - (A) A party's Subcontractors or First-tier Subcontractors at any tier;
 - (B) A party's users or customers at any tier; or
 - (C) A Subcontractor or First-tier Subcontractor of a party's user or customer at any tier.
- (c)
- (1) The Subcontractor agrees to a waiver of liability pursuant to which the Subcontractor waives all claims against any of the entities or persons listed in paragraphs (c)(1)(A) through (c)(1)(C) of this provision based on damage arising out of Protected Space Operations. This waiver shall apply only if the person, entity, or property causing the damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. The waiver shall apply to any claims for damage, whatever the legal basis for such claims, including but not limited to a delict (a term used in civil law countries to denote a class of cases similar to tort) and tort (including negligence of every degree and kind) and Subcontract, against:
 - (A) Any party other than the Government;
 - (B) A related entity of any party other than the Government; and
 - (C) The employees of any of the entities identified in (c)(1)(A) and (B) above.
 - (2) The Subcontractor agrees to extend the waiver of liability as set forth in paragraph (c)(1) of this provision to First-tier Subcontractors at any tier by requiring them, by Subcontract or otherwise, to agree to waive all claims against the entities or persons identified in paragraphs (c)(1)(A) through (c)(1)(C) of this provision.
 - (3) For avoidance of doubt, this cross-waiver includes a cross-waiver of liability arising from the Convention on International Liability for Damage Caused by Space Objects, (March 29, 1972, 24 United States Treaties and other International Agreements (U.S.T.) 2389, Treaties and Other International Acts Series (T.I.A.S.)

No. 7762) in which the person, entity, or property causing the damage is involved in Protected Space Operations.

- (4) Notwithstanding the other provisions of this provision, this waiver of liability shall not be applicable to:
 - (A) Claims between any party and its related entities or claims between any party's related entities (e.g., claims between the Government and the Subcontractor are included within this exception);
 - (B) Claims made by a natural person, his/her estate, survivors, or subrogees for injury or death of such natural person;
 - (C) Claims for damage caused by willful misconduct; and
 - (D) Intellectual property claims.
- (5) Nothing in this section shall be construed to create the basis for a claim or suit where none would otherwise exist.
- (6) This cross-waiver shall not be applicable when the Commercial Space Launch Act cross-waiver (49 U.S.C. App. 2615) is applicable.

PART C. CROSS-WAIVER OF LIABILITY FOR SPACE STATION ACTIVITIES

- (a) The Intergovernmental Agreement for Space Station Freedom contains a broad cross-waiver provision to encourage participation in the exploration and use of outer space through the Space Station. The purpose of this provision is to extend this cross-waiver requirement to Subcontractors and First-tier Subcontractors as related entities of NASA. This cross-waiver of liability shall be broadly construed to achieve this objective of encouraging participation in space activities.
- (b) As used in this provision, the term:
 - (1) "Damage" means:
 - (A) Bodily injury to, or other impairment of health of, or death of, any person;
 - (B) Damage to, loss of, or loss of use of any property;
 - (C) Loss of revenue or profits; or
 - (D) Other direct, indirect, or consequential damage.
 - (2) "Launch Vehicle" means an object (or any part thereof) intended for launch, launched from Earth, or returning to Earth that carries payloads or persons, or both.
 - (3) "Partner State" means each contracting party for which the "Agreement among the Government of the United States of America, Governments of Member States of the European Space Agency, Government of Japan, and the Government of Canada on Cooperation in the Detailed Design, Development, Operation, and Utilization of the Permanently Manned Civil Space Station" (the "Intergovernmental Agreement") has entered into force, in accordance with Article 25 of the Intergovernmental Agreement, and also includes any future signatories of the Intergovernmental Agreement. It includes the Cooperating Agency of a Partner State. The National Aeronautics and Space Administration (NASA) for the United States, the Canadian Space Agency (CSA) for the Government of Canada, the European Space Agency (ESA), and the Science and Technology Agency of Japan (STA) are the Cooperating Agencies responsible for implementing Space Station cooperation. A Partner State also includes any entity specified in the Memorandum of Understanding (MOU) between NASA and the Government of Japan to assist the Government of Japan Cooperating Agency in the implementation of that MOU.
 - (4) "Payload" means any property to be flown or used on or in a launch vehicle or the Space Station.
 - (5) "Protected Space Operations" means all launch vehicle activities, space station activities, and payload activities on Earth, in outer space, or in transit between Earth and outer space performed in furtherance of the Intergovernmental Agreement or performed under this Subcontract. "Protected Space Operations" also includes all activities related to evolution of the Space Station as provided for in Article 14 of the Intergovernmental Agreement. "Protected Space Operations" excludes activities on Earth which are conducted on return from the Space Station to develop further a payload's product or process except when

such development is for Space Station-related activities in implementation of the Intergovernmental Agreement or in performance of this Subcontract. It includes, but is not limited to:

- (A) Research, design, development, test, manufacture, assembly, integration, operation, or use of launch or transfer vehicles, payloads, related support equipment, and facilities and services;
- (B) All activities related to ground support, test, training, simulation, or guidance and control equipment and related facilities or services.

(6) "Related entity" means:

- (A) A Partner State's Subcontractors or First-tier Subcontracts at any tier;
- (B) A Partner State's users or customers at any tier; or
- (C) A Subcontractor or First-tier Subcontractor of a Partner State's user or customer at any tier.

(7) "Subcontractors" and "First-tier Subcontractors" include suppliers of any kind.

(c)

- (1) The Subcontractor agrees to a cross-waiver of liability pursuant to which the Subcontractor waives all claims against any of the entities or persons listed in paragraphs (c)(1)(A) through (c)(1)(C) of this provision based on damage arising out of Protected Space Operations. This waiver shall apply only if the person, entity, or property causing the damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. The cross-waiver shall apply to any claims for damage, whatever the legal basis for such claims, including but not limited to delict (a term used in civil law countries to denote a class of cases similar to tort) and tort (including negligence of every degree and kind) and Subcontract against:
 - (A) Any Partner State other than the United States;
 - (B) A related entity of any Partner State other than the United States; and
 - (C) The employees of any of the entities identified in paragraphs (c)(1)(A) and (B) above.
- (2) The Subcontractor agrees to extend the waiver of liability as set forth in paragraph (c)(1) of this provision to First-tier Subcontractors at any tier by requiring them, by Subcontract or otherwise, to agree to waive all claims against the entities or persons identified in paragraphs (c)(1)(A) through (c)(1)(C) of this provision.
- (3) For avoidance of doubt, this cross-waiver includes a cross-waiver of liability arising from the Convention on International Liability for Damage Caused by Space Objects, (March 29, 1972, 24 United States Treaties and Other International Agreements (U.S.T.) 2389, Treaties and other International Acts Series (T.I.A.S.) No. 7762) in which the person, entity, or property causing the damage is involved in Protected Space Operations.
- (4) Notwithstanding the other provisions of this provision, this cross-waiver of liability shall not be applicable to:
 - (A) Claims between the United States and its related entities or claims between the related entities of any Partner State (e.g., claims between the Government and the Subcontractor are included within this exception);
 - (B) Claims made by a natural person, his/her estate, survivors, or subrogees for injury or death of such natural person;
 - (C) Claims for damage caused by willful misconduct; and
 - (D) Intellectual property claims.

Nothing in this section shall be construed to create the basis for a claim or suit where none would otherwise exist.

DATA REMOVAL FROM COMPUTERS

CT, FP-NR&D, FP-R&D, CIS, LH/T&M, T&MC, FPC, CREI, A-E, RSA – 09/04 NPG 2810

The Subcontractor shall completely overwrite or degauss the media containing all data (which can include sensitive, Privacy Act, proprietary, and mission critical data) from hard drives and other computer storage devices and remove licensed software from Government-owned computers before such computers leave the control of the Subcontractor organization by transfer or disposal. JPL data shall also be removed from Subcontractor-owned computers when the computer will be no longer used for this Subcontract. The Subcontractor shall archive all data required to be retained, pursuant to the "Rights in Data - General" Article. Guidance on what constitutes mission-critical data and sensitive information (such as business and restricted technology information and scientific, engineering, and research information) is contained in NASA Procedure and Guidelines for Security of Information Technology (NPG) 2810, available on the worldwide web or from the JPL Subcontracts Manager. Proprietary data consists of trade secrets and other commercial or financial information confidential to the individual owner or organization. Proprietary data is normally labeled as such. Trade secrets or commercial or financial information that has been released to the public or is otherwise in the possession of persons other than the individual owner or organization is in the public domain and may no longer be entitled to proprietary protection.

The Subcontractor shall submit to JPL a written certification that media containing all JPL data has been overwritten or degaussed from computers when returned to JPL or disposed of.

DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A-E – 09/04] [FAR 52.211-15 – 09/90]

Incorporate by reference FAR 52.211-15, Defense Priority and Allocation Requirements.

DEFINITIONS

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, A-E, RSA –09/04] [FAR 52.202-1 –12/01]

As used throughout this Subcontract, the following terms shall have the meanings set forth below:

- (a) The term "Administrator" means the Administrator or Deputy Administrator of the National Aeronautics and Space Administration.
- (b) The term "commercial component" means any component that is a commercial item.
- (c) The term "commercial item" means (see related term "nondevelopmental item," below):
 - (1) Any item, other than real property, that is of a type customarily used by the general public or by non-governmental entities for purposes other than governmental purposes and that:
 - (A) Has been sold, leased, or licensed to the general public; or
 - (B) Has been offered for sale, lease, or license to the general public;
 - (2) Any item that evolved from an item described in paragraph (c)(1) of this Article through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a solicitation;
 - (3) Any item that would satisfy a criterion expressed in paragraphs (c)(1) or (2) of this Article, but for:
 - (A) Modifications of a type customarily available in the commercial marketplace; or
 - (B) Minor modifications of a type not customarily available in the commercial marketplace made to meet JPL or Federal Government requirements. "Minor" modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;
 - (4) Any combination of items meeting the requirements of paragraphs (c)(1), (2), (3), or (5) of this Article that are of a type customarily combined and sold in combination to the general public;
 - (5) Installation services, maintenance services, repair services, training services, and other services if:

- (A) Such services are procured for support of an item referred to in paragraph (c)1), (2), (3), or (4) of this definition, regardless of whether such services are provided by the same source or at the same time as the item; and
- (B) The source of such services provides similar services contemporaneously to the general public under terms and conditions similar to those offered to the Federal Government;
- (6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed. For purposes of these services:
 - (A) "Catalog price" means a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or supplier, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public; and
 - (B) "Market prices" means current prices that are established in the course of ordinary trade between buyers and sellers free to bargain and that can be substantiated through competition or from sources independent of the offerors.
- (7) Any item, combination of items, or service referred to in subparagraphs (c)(1) through (6), notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a Subcontractor; or
- (8) A nondevelopmental item, if the procuring activity determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local Governments (see definition below).
- (d) The term "component" means any item supplied as part of an end item or of another component, except that for use in 52.225-9, and 52.225-11 see the definitions in 52.225-9(a) and 52.225-11 (a).
- (e) The term "Subcontract amount" means the Subcontract price, the estimated cost and fee, if any, or the ceiling price of the Subcontract.
- (f) The term "Contracting Officer" means the Government Contracting Officer for the Prime Contract. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.
- (g) The term "Subcontractor" means the selling party to this Subcontract/Order with the California Institute of Technology (the Institute)/JPL being the buying party. The "Subcontractor" is the first tier First-tier Subcontractor under the NASA Prime Contract between NASA and the Institute/JPL.
- (h)
 - (1) The term "FAR" means the Federal Acquisition Regulation as in effect on the date of this Subcontract, unless otherwise indicated.
 - (2) Any reference to the Contract Disputes Act is meant to refer to the Disputes provision in this Subcontract if any.
- (i) The term "Government" means the Government of the United States of America, unless the context is otherwise.
- (j) The term "Government-furnished property (GFP)" includes JPL-furnished, Government-owned property.
- (k) The term "Institute" means the California Institute of Technology as a party to this Subcontract.
- (l) The term "JPL" means the Jet Propulsion Laboratory as the organizational element of the Institute having responsibility for administration of this Subcontract. The rights of JPL under this Subcontract are the rights of the California Institute of Technology as a party to this Subcontract.
- (m) The term "JPL Subcontracts Manager" means the individual authorized to issue and administer this Subcontract for JPL.
- (n) The term "NASA" means the National Aeronautics and Space Administration.
- (o) The term "NFS" means the NASA FAR Supplement as in effect on the date of this Subcontract, unless otherwise indicated.

- (p) The term "nondevelopmental item" means:
- (1) Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;
 - (2) Any item described in paragraph (p)(1) of this definition that requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring activity; or
 - (3) Any item of supply being produced that does not meet the requirements of paragraph (p)(1) or (2) solely because the item is not yet in use.
- (q) The term "person" means any individual, partnership, corporation, association, institution or other entity.
- (r) The term "Prime Contract" means the Subcontract between the Institute and NASA for the United States of America (herein called the Government).
- (s) The term "Schedule" means the statements in the order/Subcontract, including statement of work, description of items to be supplied, delivery dates, special provisions, options and any other statements excluding the General Provisions (the term "General Provisions" includes any "Additional General Provisions"), and any proposals, specifications or other documents or provisions which are made a part of this Subcontract by reference or otherwise.
- (t) The term "First-tier Subcontract," as used in this Subcontract, includes, but is not limited to, purchase orders under this Subcontract.
- (u) The terms "United States" or "U.S." mean the United States of America.

DRUG-FREE WORKPLACE REQUIREMENTS

[CT, FP-NR&D, FP-R&D, CIS, T&MC, LH/T&M, FPC, CREI, A-E –09/04] [FAR 52.223-6 – 05/01]

The Subcontractor agrees to inform all Subcontractor personnel who work at JPL or are involved with any JPL activity on or off JPL premises that they are required to comply with the JPL "Drug Free Workplace Policy." The Subcontractor further agrees to inform all Subcontractor personnel, working at JPL or involved with any JPL activity on or off JPL premises that JPL's policy is to fully comply with the requirements of the Drug-Free Workplace Act and that Subcontractor personnel are required to comply with JPL's policy of maintaining a drug-free workplace.

ELECTRICAL EQUIPMENT ACQUISITION

[CT, FP-NR&D, FP-R&D, CIS, T&MC, LH/T&M, FPC, CREI – 09/04]

(This Article is applicable if the Subcontract involves acquisition of off-the-shelf electrical equipment for delivery to or use by JPL or its designees.)

The electrical equipment being provided by the Subcontractor under this Subcontract shall be listed by Underwriters Laboratory, Factory Mutual Insurance Association, Canadian Standards Association, or similar organization of recognized standing. In the event that the equipment does not carry an appropriate approval, the individual components making up the item must be listed. Proof of listing shall be provided with delivery of the equipment in the form of accompanying data or labels. Any item not conforming to these requirements may be returned to the Subcontractor at the Subcontractor's expense. The Subcontractor agrees to require First-tier Subcontractors, if any, which supply electrical equipment for delivery to or use by JPL or its designees to comply with this Article.

EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A-E, RSA, CIS – 09/04] [FAR 52.222-35 – 12/01]

(This Article is applicable to this Subcontract (and any First-tier Subcontract) when the Article at 52.22-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans is applicable.)

Incorporate by reference FAR 52.222-37, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans.

ENVIRONMENTAL COMPLIANCE

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A-E – 09/04] [FAR 52.223-11 – 05/01; 52.223-12 - 05/95]

(This Article is applicable to all Subcontracts to be performed at least partially within the United States, its possessions, and Puerto Rico.)

- (a) Environmental Compliance. Environmental controls shall be in accordance with all applicable Federal, State and local regulatory requirements and in accordance with all applicable Executive Orders of the President. In addition the Subcontractor shall comply with the provisions set forth below.
- (b) The Subcontractor shall comply with the applicable requirements of Sections 608 and 609 of the Clean Air Act (42 U.S.C.7671g and 7671h) as each or both apply to this Subcontract.

(c)

- (1) Definition. "Ozone-depleting substance", as used in this clause, means any substance the Environmental Protection Agency (EPA) designates in 40 CFR Part 82 as: (i) Class I, including but not limited to chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or (ii) Class II, including, but not limited to, hydrochlorofluorocarbons.
- (2) The Subcontractor shall label products which contain or are manufactured with ozone-depleting substances in the manner and to the extent required by 42 U.S.C. 7671j (b), (c), and (d) and 40 CFR Part 82, Subpart E, as follows:

Warning

Contains (or manufactured with, if applicable) (*)_____, a substance(s) which harm(s) public health and environment by destroying ozone in the upper atmosphere.

(* The Subcontractor shall insert the name of the substance(s))

EQUAL OPPORTUNITY

[CT, FP-NR&D, FP-R&D, CIS, T&MC, LH/T&M, FPC, CREI, A-E, RSA – 09/04] [FAR 52.222-26 – 04/02]

(The following Article is applicable unless this Subcontract is exempt under the rules, regulations, and relevant orders of the Secretary of Labor issued under Executive Order 11246, as amended; for example, work performed outside the United States by employees who were not recruited within the United States is exempt from the requirements of this Article. If, during any 12-month period [including the 12 months preceding the award of this Subcontract], the Subcontractor has been or is awarded nonexempt Federal Subcontracts and/or First-tier Subcontracts that have an aggregate value in excess of \$10,000, the Subcontractor shall comply with FAR 52.222-26 during performance of this Subcontract. Upon request, the Subcontractor shall provide information necessary to determine the applicability of this Article.)

Incorporate by reference FAR 52.222-26, Equal Opportunity (E.O. 11246).

EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS

[CT, FP-NR&D, FP-R&D, CIS, T&MC, LH/T&M, FPC, CREI, A-E – 09/04] [FAR 52.222-35 - 12/01]

(This Article applies to Subcontracts of \$25,000 or more, unless the work is performed outside the United States by employees recruited outside the United States.)

Incorporate by reference 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (38 U.S.C. 4212).

EXPORT LICENSES

CT, FP-NR&D, FP-R&D, CIS, T&MC, LH/T&M, FPC, CREI – 09/04 NFS 1852.225-70 – 02/00 (ALT 1 – 02/00)

- (a) The Subcontractor shall comply with all U.S. export control laws and regulations, including the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120 through 130, and the Export Administration Regulations (EAR), 15 CFR Parts 730 through 799, in the performance of this Subcontract. In the absence of available license exemptions/exceptions, the Subcontractor shall be responsible for obtaining the appropriate licenses or other approvals, if required, for exports of hardware, technical data, and software, or for the provision of technical assistance.

- (b) The Subcontractor shall be responsible for obtaining export licenses, if required, before utilizing foreign persons in the performance of this Subcontract, including instances where the work is to be performed on-site at JPL, where the foreign person will have access to export-controlled technical data or software.
- (c) The Subcontractor shall be responsible for all regulatory record keeping requirements associated with the use of licenses and license exemptions/exceptions.
- (d) The Subcontractor shall be responsible for ensuring that the provisions of this clause apply to its First-tier Subcontractors.
- (e) The Subcontractor may request, in writing, that the Contracting Officer authorize it to export ITAR-controlled technical data (including software) pursuant to the exemption at 22 CFR 125.4(b)(3). The Contracting Officer or designated representative may authorize or direct the use of the exemption where the data does not disclose details of the design, development, production, or manufacture of any defense article.

EXISTING COMMERCIAL COMPUTER SOFTWARE – LICENSING

[CT, FP-NR&D, FP-R&D, CIS, T&MC, LH/T&M, CREI – 09/04] [NFS 1852.227-86 – 12/87]

(This Article is applicable to the acquisition of any existing commercial computer software under this Subcontract.)

- (a) Any delivered commercial computer software (including documentation thereof) developed at private expense and claimed as proprietary shall be subject to the restricted rights in paragraph (d) below. Where the Supplier/Subcontractor proposes its standard commercial software license, only those applicable portions thereof which comply with the other provisions of this Subcontract, Federal laws, FAR and NFS, including the restricted rights in paragraph (d) below, are incorporated into and made a part of this Purchase Order/Subcontract.
- (b) Although the Supplier/Subcontractor might not propose its standard commercial software license until after this Purchase Order/Subcontract has been issued, or at or after the time the computer software is delivered, such license shall nevertheless be deemed incorporated into and made a part of this Purchase Order/Subcontract under the same terms and conditions as in paragraph (a) above. For purposes of receiving updates, correction notices, consultation, and similar activities on the computer software, any authorized user may acknowledge receipt of a registration form or card and return it directly to the Supplier/Subcontractor; however, such signing shall not add to or alter any of the terms and conditions of this Article or the Purchase Order/Subcontract into which this Article is incorporated.
- (c) The Supplier's/Subcontractor's acceptance is expressly limited to the terms and conditions of this Purchase Order/Subcontract. If the specified computer software is shipped or delivered to JPL or NASA, it shall be understood that the Supplier/Subcontractor has unconditionally accepted the terms and conditions set forth in this Article, and that the terms and conditions of this Purchase Order/Subcontract (including the incorporated license) constitute the entire agreement between the parties concerning rights in the computer software.
- (d) The following restricted rights shall apply:
 - (1) The commercial computer software may not be used, reproduced, or disclosed by the Institute or the Government except as provided below or otherwise expressly stated in the Purchase Order/Subcontract.
 - (2) The commercial computer software may be:
 - (A) Used, or copied for use, in or with any computer owned or leased by, or on behalf of, the Government, or the Institute in support and furtherance of its Government Subcontract obligations; provided, the software is not used, nor copied for use, in or with more than one computer simultaneously, unless otherwise permitted by the license incorporated under paragraphs (a) or (b) above;
 - (B) Reproduced for safekeeping (archives) or backup purposes;
 - (C) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating restricted computer software shall be subject to the same restricted rights; and
 - (D) Disclosed and reproduced for use by Government or Institute Subcontractors or their First-tier Subcontractors in accordance with the restricted rights in subdivisions (A), (B), and (C) above; provided they have the Government's or the Institute's permission to use the computer software and have also agreed to protect the computer software from unauthorized use and disclosure.

- (3) If the incorporated Supplier's/Subcontractor's software license contains provisions or rights that are less restrictive than the restricted rights in subparagraph (d)(2) above, then the less restrictive provisions or rights shall prevail.
- (4) If the computer software is published, copyrighted computer software, it is licensed to the Government, and in support and furtherance of its Government Subcontract obligations, the Institute, without disclosure prohibitions, with the rights in subparagraphs (d)(2) and (3) above. Any copyright license required in order to perform work under this First-tier Subcontract is freely transferable to any successor-in-interest of the Subcontractor, a successor Subcontractor to operate JPL, or the Government
- (5) The computer software may be marked with any appropriate proprietary notice that is consistent with the rights in subparagraphs (d)(2), (3), and (4) above.
- (e) The Subcontractor warrants that it has the right to sell, license, or transfer the license for the software furnished to the customer under this Subcontract in accordance with the terms of this Subcontract.

FACSIMILE COPIES ACCEPTABLE

[CT, FP-NR&D, FP-R&D, CIS, T&MC, LH/T&M, FPC, CREI, A-E, RSA – 09/04]

The parties agree that facsimile (fax) copies of Subcontract documents are just as binding as originally executed documents.

FEDERAL, STATE, AND LOCAL TAXES

[FP-NR&D, FP-R&D, FPC, A-E – 09/04] [FAR 52.229-3 – 04/03]

- (a) Items of tangible personal property to be delivered under this Subcontract are for resale to the United States Government (California Resale Certificate No. SR AP 17-006226).
- (b) FAR 52.229-3 is hereby incorporated by reference, except that the letters "JPL" shall be substituted for the words "the Contracting Officer" and the words "the Government" wherever they appear.

FINAL REPORT

CT, FP-NR&D, FP-R&D, LH/T&M, CREI, RSA – 09/04 [NPG 2200.2A]

(This Article applies to Subcontracts requiring final, formal, published reports prepared for NASA funded or sponsored science technology, research and development, and space flight projects).

The Subcontractor's final published report shall (1) indicate that the work is funded by NASA, (2) be formatted in accordance with NPG 2200.2A, (3) be correctly marked to ensure appropriate dissemination, and (4) be forwarded to JPL.

FIRST-TIER SUBCONTRACTS

[FP-NR&D, FP-R&D – 09/04] [FAR 52.244-2 – 08/98]

No First-tier Subcontract shall be made by the Subcontractor with any other party for furnishing any of the completed or substantially completed articles or work herein Subcontracted for, without the written approval of JPL as to sources.

FIRST-TIER SUBCONTRACTS FOR COMMERCIAL ITEMS

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A-E – 09/04] [FAR 52.244-6 – 05/02]

- (a) Definition.
 - (1) "Commercial item," as used in this Article, has the meaning contained in the "Definitions" Article and in FAR 52.202-1, "Definitions."
 - (2) "First-tier Subcontract," as used in this Article, includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Subcontractor or First-tier Subcontractor at any tier.
- (b) To the maximum extent practicable, the Subcontractor shall incorporate, and require its First-tier Subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this Subcontract.
- (c)
 - (1) The Subcontractor shall insert the following clauses in First-tier Subcontracts for commercial items:

- (i) 52.219-8, Utilization of Small Business Concerns (Oct 200) (15 U.S.C. 637(d)(2)(3)), in all First-tier Subcontracts that offer further First-tier Subcontracting opportunities. If the First-tier Subcontract (except First-tier Subcontracts to small business concerns) exceed \$500,000 (\$1,000,000 for construction of any public facility), the First-tier Subcontractor must include 52.219-8 in lower tier First-tier Subcontracts that offer First-tier Subcontracting opportunities.
 - (ii) 52.222-26, Equal Opportunity (Apr 2002) (E.O. 11246).
 - (iii) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Dec 2001) (38 U.S.C. 4212(a));
 - (iv) 52.222-36, Affirmative Action for Workers with Disabilities (Jun 1998) (29 U.S.C. 793).
 - (v) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (APR 2003) (46 U.S.C. Appx 1241 and 10 U.S.C. 2631) (flow down required in accordance with paragraph (d) of FAR clause 52.247-64).
- (2) While not required, the Subcontractor may flow down to First-tier Subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.
- (d) The Subcontractor shall include the terms of this Article, including this paragraph (d), in First-tier Subcontracts awarded under this Subcontract.

GEOGRAPHIC PARTICIPATION IN THE AEROSPACE PROGRAM

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, CREI – 09/04] [NFS 1852.244-70 – 04/85]

(This Article is applicable to Subcontracts and First-tier Subcontracts of \$100,000 or more. Work performed outside the United States is exempt from the requirements of this Article.)

Incorporate by reference NFS 1852.244-70, Geographic Participation in the Aerospace Program.

GOVERNMENT PROPERTY

[FP-NR&D, FP-R&D, LH/T&M, T&MC, FPC, A-E – 09/04] [FAR 52.245-4 – 06/03]

- (a) JPL shall deliver to the Subcontractor, at the time stated in the Schedule or, if not so stated, in sufficient time to enable the Subcontractor to meet the delivery or performance schedule, the Government-owned property described as JPL-furnished property in the Schedule or specifications. If that property, suitable for its intended use, is not delivered to the Subcontractor, JPL shall equitably adjust affected provisions of this Subcontract in accordance with the Changes Article when:
 - (1) The Subcontractor submits a timely written request for an equitable adjustment; and
 - (2) The facts warrant an equitable adjustment.
- (b) Title to JPL-furnished property shall remain in the Government. The Subcontractor shall use the JPL-furnished property only in connection with this Subcontract. The Subcontractor shall maintain adequate property control records in accordance with sound industrial practice and will make such records available for JPL or Government inspection at all reasonable times.
- (c) Upon delivery of JPL-furnished property to the Subcontractor, the Subcontractor assumes the risk and responsibility for its loss or damage, except:
 - (1) For reasonable wear and tear;
 - (2) To the extent property is consumed in performing this Subcontract; or
 - (3) As otherwise provided for by the provisions of this Subcontract.
- (d) Upon completing this Subcontract, the Subcontractor shall follow the instructions of JPL regarding the disposition of all JPL-furnished property not consumed in performing this Subcontract or previously delivered to JPL. The Subcontractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property, as may be directed or authorized by JPL. The net proceeds of any such disposal shall be credited to the Subcontract price or shall be paid as directed by JPL.
- (e) If this Subcontract is to be performed outside the United States and its outlying areas, the words "Government" and "JPL-furnished" (wherever they appear in this Article) shall be construed as "United States Government" and "United States Government-owned/JPL-furnished," respectively.

- (f) If JPL-furnished property has been provided to the Subcontractor under this Subcontract, the Subcontractor shall submit NASA Form 1018, "The Report of Government-Owned/Contractor-Held Property" (or equivalent) (or a negative report, if applicable), to JPL monthly and annually (date to be determined by JPL).

HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA

[CT, FP-NR&D, FP-R&D, CIS, T&MC, LH/T&M, FPC, CREI – 09/04] [FAR 52.223-3 – 1/97, Alt. I – 07/95]

(This Article applies if any materials are to be supplied which are defined as hazardous under the latest version of Federal Standard No. 313 [including revisions adopted during the term of the Subcontract].

Incorporate FAR 52.223-3 [Jan 97, Alt. I, Jul 95] with JPL Subcontracts Manager in lieu of Contracting Officer and adding JPL with the Government in all respects including safety and rights to data.)

INJURY AND ILLNESS PREVENTION PROGRAM

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A-E – 09/04]

All Subcontractors whose personnel work at a site in California must establish and implement an effective injury and illness prevention program in compliance with California law.

INSPECTION -OF SUPPLIES – FIXED PRICE

[FP-NR&D – 09/04] [FAR 52.246-2 – 8/96; 52.246-9 – 04/84]

(This Article is applicable when the Subcontract amount exceeds \$100,000.)

- (a) Definition. "Supplies," as used in this Article, includes but is not limited to raw materials, components, intermediate assemblies, end products, and lots of supplies.
- (b) The Subcontractor shall provide and maintain an inspection system acceptable to JPL covering supplies under this Subcontract and shall tender to JPL for acceptance only supplies that have been inspected in accordance with the inspection system and have been found by the Subcontractor to be in conformity with Subcontract requirements. As part of the system, the Subcontractor shall prepare records evidencing all inspections made under the system and the outcome. These records shall be kept complete and made available to JPL during Subcontract performance and for as long afterwards as the Subcontract requires. JPL may perform reviews and evaluations as reasonably necessary to ascertain compliance with this paragraph. These reviews and evaluations shall be conducted in a manner that will not unduly delay the Subcontract work. The right of review, whether exercised or not, does not relieve the Subcontractor of the obligations under the Subcontract.
- (c) JPL has the right to inspect and test all supplies called for by the Subcontract, to the extent practicable, at all places and times, including the period of manufacture, and in any event before acceptance. JPL shall perform inspections and tests in a manner that will not unduly delay the work. JPL assumes no contractual obligation to perform any inspection and test for the benefit of the Subcontractor unless specifically set forth elsewhere in this Subcontract.
- (d) If JPL performs inspection or test on the premises of the Subcontractor or a First-tier Subcontractor, the Subcontractor shall furnish, and shall require First-tier Subcontractors to furnish, without additional charge, all reasonable facilities and assistance for the safe and convenient performance of these duties. Except as otherwise provided in the Subcontract, JPL shall bear the expense of inspections or tests made at other than the Subcontractor's or First-tier Subcontractor's premises; provided, that in case of rejection, JPL shall not be liable for any reduction in the value of inspection or test samples.
- (e)
 - (1) When supplies are not ready at the time specified by the Subcontractor for inspection or test, JPL may charge to the Subcontractor the additional cost of inspection or test.
 - (2) JPL may also charge the Subcontractor for any additional cost of inspection or test when prior rejection makes reinspection or retest necessary.
- (f) JPL has the right either to reject or to require correction of nonconforming supplies. Supplies are nonconforming when they are defective in material or workmanship or are otherwise not in conformity with Subcontract requirements. JPL may reject nonconforming supplies with or without disposition instructions.
- (g) The Subcontractor shall remove supplies rejected or required to be corrected. However, JPL may require or permit correction in place promptly after notice, by and at the expense of the Subcontractor. The Subcontractor

shall not tender for acceptance corrected or rejected supplies without disclosing the former rejection or requirement for correction, and, when required, shall disclose the corrective action taken.

- (h) If the Subcontractor fails to promptly remove, replace, or correct rejected supplies that are required to be removed or to be replaced or corrected, JPL may either (i) by Subcontract or otherwise, remove, replace, or correct the supplies and charge the cost to the Subcontractor or (ii) terminate the Subcontract for default as provided in the Article of this Subcontract entitled "Default." Unless the Subcontractor corrects or replaces the supplies within the delivery schedule, JPL may require their delivery and make an equitable price reduction.
- (i)
 - (1) If this Subcontract provides for the performance of JPL quality assurance at source, and if requested by JPL, the Subcontractor shall furnish advance notification of the time (i) when Subcontractor inspection or tests will be performed in accordance with the terms and conditions of the Subcontract and (ii) when the supplies will be ready for JPL inspection.
 - (2) The JPL request shall specify the period and method of the advance notification and the JPL representative to whom it shall be furnished. Requests shall not require more than two workdays of advance notification if the JPL representative is in residence in the Subcontractor's plant, nor more than seven workdays in other instances.
- (j) JPL shall accept or reject supplies as promptly as practicable after delivery, unless otherwise provided in the Subcontract; but failure to inspect and accept or reject the supplies shall not relieve the Subcontractor from responsibility, nor impose liability on JPL, for nonconforming supplies.
- (k) Inspections and tests by JPL do not relieve the Subcontractor of responsibility for defects or other failures to meet Subcontract requirements discovered before acceptance. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as regards JPL's rights under any warranty or guarantee, or as otherwise specified in this Subcontract.
- (l) If acceptance is not conclusive for any of the reasons in paragraph (k) hereof, JPL, in addition to any other rights and remedies provided by law, or under other provisions of this Subcontract, shall have the right to require the Subcontractor (i) at no increase in Subcontract price, to correct or replace the defective or nonconforming supplies at the original point of delivery or at the Subcontractor's plant at JPL's election, and in accordance with a reasonable delivery schedule as may be agreed upon between the Subcontractor and JPL, provided, that JPL may require a reduction in Subcontract price if the Subcontractor fails to meet such delivery schedule, or (ii) within a reasonable time after receipt by the Subcontractor of notice of defects or nonconformance, to repay such portion of the Subcontract as is equitable under the circumstances if JPL elects not to require correction or replacement. When supplies are returned to the Subcontractor, the Subcontractor shall bear the transportation cost from the original point of delivery to the Subcontractor's plant and return to the original point when that point is not the Subcontractor's plant. If the Subcontractor fails to perform or act as required in (i) or (ii) above and does not cure such failure within a period of 10 days (or such longer period as JPL may authorize in writing) after receipt of notice from JPL specifying such failure, JPL shall have the right by Subcontract or otherwise to replace or correct such supplies and charge to the Subcontractor the cost occasioned JPL thereby.

INSURANCE AND INDEMNIFICATION

[FP-NR&D, FP-R&D, CIS, LH/T&M, T&MC – 09/04] [FAR 52.228-5 - 01/97]

(Work performed outside the United States is exempt from the requirements of this Article.)

- (a) This Article is applicable if:
 - (1) The performance of this Subcontract includes activities which could endanger non-Subcontractor personnel and such activities are performed at a location which is not secured by appropriate Subcontractor-controlled access restrictions; or
 - (2) This Subcontract requires work on a Government installation or premises under the control of the Institute, unless:
 - (A) Only a small amount of work is required on the Government installation or Institute-controlled premises; or
 - (B) All such work is to be performed outside the United States, its possessions, or Puerto Rico.

- (b) Insurance. The Subcontractor shall, at its own expense, provide and maintain during the entire performance period of this Subcontract at least the following kinds and minimum amounts of insurance with the Institute named as an additional insured in policies for comprehensive liability insurance with a carrier licensed and admitted in the State of California.
- (1) Workers' Compensation and Employer's Liability Insurance, as required by applicable Federal and state workers' compensation and occupational disease statutes. If occupational diseases are not compensable under those statutes, they shall be covered under the Employer's Liability section of the insurance policy, except when Subcontract operations are so commingled with the Subcontractor's commercial operations that it would not be practical. The Employer's Liability coverage shall be at least \$100,000, except in states with exclusive or monopolistic funds that do not permit worker's compensation to be written by private carriers. However, the Subcontractor in fulfillment of its obligation to provide Workers' Compensation Insurance may maintain a self-insurance program if the Subcontractor is qualified pursuant to statutory authority to do so.
 - (2) Comprehensive Liability Insurance, including automobiles (owned, non-owned, or leased), completed operations, products, and contractual liability, for a combined single limit of not less than \$1,000,000 for all deaths, injuries, and property damage arising from one accident or occurrence.
- (c) Insurance Certificates and Endorsements. Before commencing work under this Subcontract, the Subcontractor shall furnish (i) certificates of insurance for the coverages specified in paragraph (b) above, and (ii) an additional insured endorsement naming the Institute as an additional insured to the Subcontract for the coverage specified in paragraph (b)(2) above. Such certificates and the endorsement shall provide that any cancellation or material change in the insurance policies shall not be effective (i) for such period as the laws of the State in which this Subcontract is to be performed prescribe, or (ii) until 30 days after the insurer or the Subcontractor gives written notice to JPL, whichever period is longer. Also, such certificates and the endorsement shall (i) cover contractual liability assumed under this Subcontract, and (ii) be primary and non-contributing to any insurance procured by the Institute. The Subcontractor agrees to permit the Institute to examine its original policies, should the Institute so request. Should the Subcontractor at any time neglect or refuse to provide the insurance required herein, or should such insurance be canceled, the Institute shall have the right to procure same and the costs thereof shall be deducted from monies then due or thereafter to become due to the Subcontractor.
- (d) Indemnification. The Subcontractor agrees that it will be responsible to the Government and the Institute for, and will indemnify and hold harmless the Government and the Institute, its trustees, officers, and employees, from any loss, cost, damage, expense or liability, attorney's fees, or any suit therefore, by reason of actual or alleged property damage or personal injury of whatsoever kind or character, arising out of or in connection with the performance of work hereunder by the Subcontractor or any of its First-tier Subcontractors, howsoever the same may be caused, including any of the same resulting from alleged or actual negligent act or omission, regardless of whether such act or omission is active or passive, but excepting only such loss, cost, damage, expense or liability attributable to the negligence or willful misconduct of the Government or of the Institute, its trustees, officers or employees.
- (e) First-tier Subcontracts.
- (1) The Subcontractor shall insert the substance of this Article, including this paragraph (e), in First-tier Subcontracts under this Subcontract if:
 - (A) The performance of the First-tier Subcontract includes activities which could endanger non-First-tier Subcontractor personnel and such activities are performed at a location which is not secured by appropriate First-tier Subcontractor-controlled access restrictions; or
 - (B) This First-tier Subcontract requires work on a Government installation or premises under the control of the Institute, unless:
 - (i) Only a small amount of work is required on the Government installation or Institute-controlled premises; or
 - (ii) All such work is to be performed outside the United States, its possessions, or Puerto Rico, modified as necessary to correctly identify the parties.
 - (2) At least five days before entry of each such First-tier Subcontractor's personnel on the Government installation or Institute-controlled premises, the Subcontractor shall furnish (or ensure that there has been furnished) to JPL a current certificate of insurance meeting the requirements of paragraph (c) above, for each such First-tier Subcontractor.

INTEGRITY OF UNIT PRICES

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, CREI – 09/04] [FAR 52.215-14 – 10/97]

(This Article is applicable if the initial Subcontract price exceeds \$100,000, unless the Subcontract is for services where supplies are not required, construction or architect-engineer services, utility services, commercial items, or petroleum products.)

- (a) Any proposal submitted for the negotiation of prices for items of supplies shall distribute costs within Subcontracts on a basis that ensures that unit prices are in proportion to the items' base cost (e.g., manufacturing or acquisition costs). Any method of distributing costs to line items that distorts unit prices shall not be used. For example, distributing costs equally among line items is not acceptable except when there is little or no variation in base cost. Nothing in this paragraph requires submission of cost or pricing data not otherwise required by law or regulation.
- (b) The Subcontractor shall insert the substance of this Article in all First-tier Subcontracts meeting the applicability prescription above.

LIMITATION OF LIABILITY

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, CREI – 09/04] [FAR 52.246-23, 52.246-24, and 52.246-25 – 02/97]

This Article includes 3 Parts: Part 2, Limitation of Liability – High Value Items, applies to all items delivered under this Subcontract to JPL which have a unit cost exceeding \$100,000; Part 1, Limitation of Liability, applies to all other items delivered under this Subcontract. Part 3, Limitation of Liability – Services, applies if the Subcontract is over \$100,000 and requires the performance of services.

Part 1: LIMITATION OF LIABILITY

(Applies to all items delivered under this Subcontract other than High Value Items)

- (a) Except as provided in paragraphs (b) and (c) below, and except for remedies expressly provided elsewhere in this Subcontract, the Subcontractor shall not be liable for loss of or damage to property of the Government (excluding the supplies delivered under this Subcontract) that (i) occurs after acceptance of the supplies delivered under this Subcontract and (ii) results from any defects or deficiencies in the supplies.
- (b) The limitation of liability under paragraph (a) above shall not apply when a defect or deficiency in, or the acceptance of, the supplies results from willful misconduct or lack of good faith on the part of any of the Subcontractor's managerial personnel. The term "Subcontractor's managerial personnel," as used in this Article, means the Subcontractor's directors, officers, and any of the Subcontractor's managers, superintendents, or equivalent representatives who have supervision or direction of:
 - (1) All or substantially all of the Subcontractor's business;
 - (2) All or substantially all of the Subcontractor's operations at any one plant, laboratory, or separate location at which the Subcontract is being performed; or
 - (3) A separate and complete major industrial operation connected with the performance of this Subcontract.
- (c) If the Subcontractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the Institute or the Government through purchase or use of the supplies required to be delivered under this Subcontract, the Subcontractor shall be liable to the Institute and the Government, to the extent of such insurance or reserve, for loss of or damage to property of the Institute and the Government occurring after acceptance of, and resulting from any defects or deficiencies in, the supplies delivered under this Subcontract.
- (d) The Subcontractor shall include this Article, including this paragraph (d), supplemented as necessary to reflect the relationship of the contracting parties, in all First-tier Subcontracts.

Part 2: Limitation of Liability – High Value Items

(Applies to all items delivered under this Subcontract to JPL which have a unit cost exceeding \$100,000)

- (a) Except as provided in paragraphs (b) through (e) below, and notwithstanding any other provision of this Subcontract, the Subcontractor shall not be liable for loss of or damage to property of the Institute or the Government (including the supplies delivered under this Subcontract) that:

- (1) Occurs after JPL acceptance of the supplies delivered under this Subcontract; and
 - (2) Results from any defects or deficiencies in the supplies.
- (b) The limitation of liability under paragraph (a) above shall not apply when a defect or deficiency in, or JPL's acceptance of, the supplies results from willful misconduct or lack of good faith on the part of any of the Subcontractor's managerial personnel. The term "Subcontractor's managerial personnel," as used in this Article, means the Subcontractor's directors, officers and any of the Subcontractor's managers, superintendents, or equivalent representatives who have supervision or direction of:
- (1) All or substantially all of the Subcontractor's business;
 - (2) All or substantially all of the Subcontractor's operations at any one plant, laboratory, or separate location at which the Subcontract is being performed; or
 - (3) A separate and complete major industrial operation connected with the performance of this Subcontract.
- (c) If the Subcontractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the Institute or the Government through purchase or use of the supplies required to be delivered under this Subcontract, the Subcontractor shall be liable to the Institute and the Government, to the extent of such insurance or reserve, for loss of or damage to property of the Government occurring after JPL acceptance of, and resulting from any defects or deficiencies in, the supplies delivered under this Subcontract.
- (d)
- (1) This Article does not diminish the Subcontractor's obligations, to the extent that they arise otherwise under this Subcontract, relating to correction, repair, replacement, or other relief for any defect or deficiency in supplies delivered under this Subcontract.
 - (2) Unless this is a cost-reimbursement Subcontract, if loss or damage occurs and correction, repair, or replacement is not feasible or desired by JPL, the Subcontractor shall, as determined by JPL:
 - (A) Pay the Institute the amount it would have cost the Subcontractor to make correction, repair, or replacement before the loss or damage occurred; or
 - (B) Provide other equitable relief.
- (e) This Article shall not limit or otherwise affect the Institute's or the Government's rights under Articles, if included in this Subcontract, that cover:
- (1) Warranty of technical data;
 - (2) Ground and flight risks or aircraft flight risks; or
 - (3) Government property.
- (f) In each First-tier Subcontract, except a First-tier Subcontract covered by paragraph (g) below, the Subcontractor shall insert the appropriate Article, supplemented as necessary to reflect the relationship of the contracting parties, as follows:
- (1) In First-tier Subcontracts for high-value items only, after obtaining JPL's advance written approval, insert this Article, including this paragraph (f).
 - (2) In First-tier Subcontracts for other end items only, insert the clause at FAR subsection 52.246-23, Limitation of Liability.
- (g) In any First-tier Subcontract for both high-value items for which this Article is appropriate, and other end items for which the clause at FAR subsection 52.246-23, and any corresponding implementing or supplementing provisions in the NFS, is appropriate, after obtaining the JPL's advance written approval to use this Article, the Subcontractor shall:
- (1) Include both this Article and the FAR clause;
 - (2) Identify high-value items by line item; and
 - (3) Insert the following preamble before paragraph (a) of this Article as used in that First-tier Subcontract:

"(This Article shall apply only to those items identified in this Subcontract as being subject to this Article.)"

Part 3: Limitation of Liability – Services

(Applies if the Subcontract is over \$100,000 and requires the performance of services)

- (a) Except as provided in paragraphs (b) and (c) below, and except to the extent that the Subcontractor is expressly responsible under this Subcontract for deficiencies in the services required to be performed under it (including any materials furnished in conjunction with those services), the Subcontractor shall not be liable for loss of or damage to property of the Institute or the Government that:
 - (1) Occurs after Institute acceptance of services performed under this Subcontract; and
 - (2) Results from any defects or deficiencies in the services performed or materials furnished.
- (b) The limitation of liability under paragraph (a) above shall not apply when a defect or deficiency in, or the Institute acceptance of, services performed or materials furnished results from willful misconduct or lack of good faith on the part of any of the Subcontractor's managerial personnel. The term "Subcontractor's managerial personnel," as used in this provision, means the Subcontractor's directors, officers, and any of the Subcontractor's managers, superintendents, or equivalent representatives who have supervision or direction of:
 - (1) All or substantially all of the Subcontractor's business;
 - (2) All or substantially all of the Subcontractor's operations at any one plant, laboratory, or separate location at which the Subcontract is being performed; or
 - (3) A separate and complete major industrial operation connected with the performance of this Subcontract.
- (c) If the Subcontractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the Institute or the Government through the Subcontractor's performance of services or furnishing of materials under this Subcontract, the Subcontractor shall be liable to the Institute or the Government, to the extent of such insurance or reserve, for loss of or damage to property of the Institute or the Government occurring after Institute acceptance of, and resulting from any defects and deficiencies in, services performed or materials furnished under this Subcontract.
- (d) The Subcontractor shall include this provision, including this paragraph (d), supplemented as necessary to reflect the relationship of the contracting parties, in all First-tier Subcontracts over \$25,000.

LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A-E, RSA – 09/04] [FAR 52.203-12 – 06/97]

(This Article applies if this Subcontract is expected to exceed \$100,000.)

Incorporate by reference FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions (June 1997).

MATERIAL REQUIREMENTS

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI – 09/04] [FAR 52.211-5 – 08/00]

- (a) Definitions (As used in this Article).
 - (1) New means composed of previously unused components, whether manufactured from virgin material, recovered material in the form of raw material, or materials and by-products generated from, and reused within, an original manufacturing process; provided that the supplies meet Subcontract requirements, including but not limited to, performance, reliability, and life expectancy.
 - (2) Reconditioned means restored to the original normal operating condition by readjustments and material replacement.
 - (3) Recovered material means waste materials and by-products that have been recovered or diverted from solid waste, but the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.
 - (4) Remanufactured means factory rebuilt to original specifications.
 - (5) Virgin material means previously unused raw material, including previously unused copper, aluminum, lead, zinc, iron, other metal or metal ore, or any undeveloped resource that is, or with new technology will become, a source of raw materials.

- (b) Unless this Subcontract otherwise requires virgin material or supplies composed of or manufactured from virgin material, the Subcontractor shall provide supplies that are new, reconditioned, or remanufactured, as defined in this Article.
- (c) A proposal to provide unused former Government surplus property shall include a complete description of the material, the quantity, the name of the Government agency from which acquired, and the date of acquisition.
- (d) A proposal to provide used, reconditioned, or remanufactured supplies shall include a detailed description of such supplies and shall be submitted to JPL for approval.
- (e) Used, reconditioned, or remanufactured supplies, or unused former Government surplus property, may be used in Subcontract performance if the Subcontractor has proposed the use of such supplies, and JPL has authorized their use.

NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A-E, RSA – 09/04] [FAR 52.227-2 – 08/96]

(The provisions of this Article shall be applicable only if the amount of this Subcontract is expected to exceed \$100,000, except when complete performance and delivery are outside the United States, its possessions, and Puerto Rico, unless ultimate delivery is into those areas.)

- (a) The Subcontractor shall report to the Contracting Officer and JPL, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this Subcontract of which the Subcontractor has knowledge.
- (b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this Subcontract or out of the use of any supplies furnished or work or services performed under this Subcontract, the Subcontractor shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in possession of the Subcontractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Subcontractor has agreed to indemnify the Government.
- (c) The Subcontractor agrees to include, and require inclusion of, this Article in all First-tier Subcontracts at any tier for supplies or services (including construction and architect-engineer First-tier Subcontracts and those for material, supplies, models, samples, or design or testing services) expected to exceed \$100,000.

NOTICE OF RADIOACTIVE MATERIALS

[CT, FP-NR&D, FP-R&D, CIS, T&MC, LH/T&M, FPC, CREI – 09/04] [FAR 52.223-7 – 01/97]

(This Article is applicable only if this Subcontract is for radioactive materials as defined in this provision.)

Incorporate FAR 52.223-7 (January 1997) inserting 30 days in paragraph (a) with JPL Subcontracts Manager in lieu of Contracting Officer, and adding JPL with the Government in all respects.

NOTICE TO JPL OF LABOR DISPUTES

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A-E – 09/04] [FAR 52.222-1 – 02/97]

- (a) If the Subcontractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Subcontract, the Subcontractor shall immediately give notice to JPL. The initial notice shall include the following:
 - (1) Identification of parts/materials, etc., which are or may be affected;
 - (2) Brief description of work-around plans to avoid delivery or performance delays. If the actual or potential dispute involves a lower-tier subcontractor, advise as to potential alternate sources;
 - (3) Other Government agencies having responsibility for any functions concerning the affected operation, e.g., quality control, agency resident representative, etc., and the title, name and telephone of the agency representative.
 - (4) Other Government agencies which have been notified of the situation, and if available, the title, name and telephone number of any representative of another agency who is involved with the actual or threatened labor dispute;
 - (5) Specific information regarding transportation of parts/materials or personnel which is or may be affected;

(6) Manufacturer/First-tier Subcontractor and union data to include:

- (A) Name, address and telephone numbers of the manufacturer/First-tier Subcontractor representative and Industrial Relations Representative to be contacted for further information;
- (B) Union's name and local lodge number, if known.

If any of the required information is not available when providing the initial notice, indicate when it is estimated that such information can be provided.

- (b) The Subcontractor agrees to insert the substance of this Article, including this paragraph (b), in any First-tier Subcontract to which a labor dispute may delay the timely performance of this Subcontract; except that each such First-tier Subcontract shall provide that, in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the First-tier Subcontractor shall immediately notify the next higher-tier subcontractor or JPL, as the case may be, concerning the dispute.

NOTIFICATION OF OWNERSHIP CHANGES

CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, A-E CREI – 09/04] [FAR 52.215-19 – 10/97]

(This Article is applicable if it is contemplated that cost of pricing data will be required or for which any preaward or postaward cost determination will be subject to Subpart 31.2)

- (a) The Subcontractor shall make the following notifications in writing:
 - (1) When the Subcontractor becomes aware that a change in its ownership has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the Subcontractor shall notify JPL within 30 days.
 - (2) The Subcontractor shall also notify JPL within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership.
- (b) The Subcontractor shall:
 - (1) Maintain current, accurate, and complete inventory records of assets and their costs;
 - (2) Provide JPL or designated representative ready access to the records upon request;
 - (3) Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Subcontractor's ownership changes; and
 - (4) Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Subcontractor ownership change.
- (c) The Subcontractor shall include the substance of this clause in all First-tier Subcontracts under this Subcontract that meet the applicability requirement of FAR 15.408(k).

ORDER OF PRECEDENCE

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, A-E, RSA - 09/04] [FAR 52.215-8 - 10/97]

- (a) The rights and obligations of the parties of this Subcontract shall be subject to and governed by the Schedule, the General Provisions (the term "General Provisions" includes any "Additional General Provisions"), and any proposals, specifications or other documents or provisions which are made a part of this Subcontract by reference or otherwise.
- (b) To the extent of any inconsistency between (i) the Schedule, other than the Alterations Article, (ii) the Alterations Article in the Schedule, and (iii) the GPs, the inconsistency will be resolved in the following order of priority:
 - (1) The Alterations Article.
 - (2) The GPs not altered.
 - (3) The Schedule, other than the Alterations Article.
- (c) To the extent of any inconsistency between
 - (1) The Schedule, other than any proposals, specifications or other documents or provisions which are made a part of this Subcontract by reference or otherwise, in the Schedule or the General Provisions, and

- (2) Any proposals, specifications or other documents or provisions which are made a part of this Subcontract by reference or otherwise in the Schedule or the General Provisions,
- (3) (c)(1) has order of precedence over (c)(2).
- (d) All provisions of this Subcontract that are required by their terms to be included in First-tier Subcontracts shall be required by the Subcontractor to take precedence in the First-tier Subcontract over any other provisions.

PAYMENTS AND DISCOUNTS

[FP-NR&D – 09/04] [FAR 52.232-1 – 04/84, FAR 52.232-8 – 02/02]

- (a) Invoices shall be submitted in triplicate to the attention of the JPL Accounting Section, unless otherwise specified, and shall contain the following information as applicable: (i) Subcontract number, (ii) item number, (iii) description of supplies or services, (iv) size, (v) quantity, (vi) unit price, (vii) extended totals and (viii) any other information which may be specified in the Schedule of this Subcontract. Any applicable state sales or use taxes or Federal excise taxes shall be shown separately on the invoice.
- (b) The Institute shall pay the Subcontractor, upon the submission of proper invoices or vouchers, the prices stipulated in this Subcontract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this Subcontract.
- (c) JPL may elect to require the Subcontractor to accept electronic payments
- (d) Payments will be made within the net period, if any, specified in the Subcontract, measured from the date of receipt of the goods or services at the destination or the date of receipt of the invoice, whichever is later. Discount time periods will be measured from the same date. Payment shall be deemed to have been made on the date the check is mailed or the date of payment by electronic funds transfer.
- (e) Payment for goods or services in accordance with this paragraph will not waive or otherwise affect the right of JPL to inspect such goods or services or to reject, or revoke acceptance of, nonconforming goods.
- (f) Unless otherwise specified in this Subcontract, payment shall be made upon acceptance of any portion of the work delivered or rendered for which a price is separately stated in the Subcontract.
- (g) Except to the extent otherwise stated in the Subcontract Schedule, the Subcontractor's entitlement to receive payment for goods delivered or services performed in an amount of \$1,000 or less is waived by the Subcontractor's failure to submit an invoice within 60 days of receipt of the goods or services.

PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI – 09/04] [FAR 52.247-64 – 06/00]

- (a) Except as provided in paragraph (b) below, the Subcontractor shall use privately owned U.S.-flag commercial vessels, and no others, in the ocean transportation of any supplies to be furnished under this Subcontract.
- (b) If such vessels are not available for timely shipment at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels, the Subcontractor shall notify JPL and request (i) authorization to ship in foreign-flag vessels or (ii) designation of available U.S.-flag vessels. If the Subcontractor is authorized in writing by JPL to ship the supplies in foreign-flag vessels, the Subcontract price shall be equitably adjusted to reflect the difference in costs of shipping the supplies in privately owned U.S.-flag commercial vessels and in foreign-flag vessels.
- (c)
 - (1) The Subcontractor shall submit one legible copy of a rated on-board ocean bill of lading for each shipment to both (i) the Contracting Officer and (ii) the Office of Cargo Preference, Maritime Administration (MAR-590) 400 Seventh Street, SW, Washington, D.C. 20590. Subcontractor and First-tier Subcontractor bills of lading shall be submitted through JPL.
 - (2) The Subcontractor shall furnish these bill of lading copies (i) within 20 working days of the date of loading for shipments originating in the United States or (ii) within 30 working days for shipments originating outside the United States. Each bill of lading copy shall contain the following information:
 - (A) NASA shown as the sponsoring U.S. Government agency.
 - (B) Name of vessel.

- (C) Vessel flag of registry.
 - (D) Date of loading.
 - (E) Port of loading.
 - (F) Port of final discharge.
 - (G) Description of commodity.
 - (H) Gross weight in pounds and cubic feet, if available.
 - (I) Total ocean freight revenue in U.S. dollars.
- (d) The Subcontractor shall insert the substance of this Article, including this paragraph (d), in all First-tier Subcontracts or purchase orders under this Subcontract.
 - (e) The requirement in paragraph (a) does not apply to:
 - (1) Cargoes carried in vessels of the Panama Canal Commission or as required or authorized by law or treaty;
 - (2) Ocean transportation between foreign countries of supplies purchased with foreign currencies made available, or derived from funds that are made available, under the Foreign Assistance Act of 1961 (22 U.S.C. 2353);
 - (3) Shipments of classified supplies when the classification prohibits the use of non-Government vessels; and
 - (f) Guidance regarding fair and reasonable rates for privately owned U.S.-flag commercial vessels may be obtained from the Office of Costs and Rates, Maritime Administration, 400 Seventh Street, SW, Washington, DC 20590, Phone: 202-366-4610.

PREFERENCE FOR U.S.-FLAG AIR CARRIERS

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A-E – 09/04] [FAR 52.247-63 – 01/97]

(This Article does not apply to Subcontracts or First-tier Subcontracts for supplies, nonpersonal services, and construction that do not exceed \$100,000. This Article is not applicable to the acquisition of commercial items or commercial components.)

Incorporate by reference FAR 52.247-63, Preference for U.S.-Flag Air Carriers.

PRINTING AND DUPLICATING

[CT, FP-NR&D, FP-R&D, LH/T&M, T&MC, CREI, A-E – 09/04] [NFS 1852.208-81 – 10/01]

(This Article does not apply unless this Subcontract requires the Subcontractor to provide printing or significant reproduction, i.e., in excess of 5,000 copies of a single page or in excess of 25,000 copies in the aggregate of multiple pages.)

- (a) NFS 1852.208-81, Restrictions on Printing and Duplicating (October 2001), is hereby incorporated into this Article in its entirety.

Note 1: The terms "documentation" referred to in paragraph (a), "printing" referred to in paragraph (b), and "production units" referred to in paragraph (c) of NFS 1852.208-81, Restrictions on Printing and Duplicating (October 2001), pertain solely to "Government publications." "Government publications" is defined as (i) reports intended primarily for internal use by the Government and (ii) reports or other materials of the type that the Government itself distributes to the public under an agency program. "Government publications" shall, unless subject to exemption under applicable regulations, be printed by or through the Government Printing Office, even though the distribution of these reports and materials may be effectuated by the Subcontractor for the Government.

Examples of documents which are "Government publications" include, but are not limited to: (i) publications released by the Subcontractor or a First-tier Subcontractor to the public for the purpose of promoting NASA or a Government agency sponsor; (ii) deliverable final reports, but not interim drafts of such reports; (iii) deliverable review board presentations and conclusions in which a majority of the review board membership consists of Government representatives.

Examples of documents which are not "Government publications" include, but are not limited to: (i) publications

for internal usage and communication by JPL or any Subcontractor or a First-tier Subcontractor such as JPL's or a Subcontractor's Telephone Directory or JPL's or a Subcontractor's internal newsletter; (ii) public information, education and public service documents, and award certificates printed for JPL's or a Subcontractor's usage rather than Government usage, including those which may contain an incidental reference to sponsorship by NASA or another Government agency; (iii) publications for which the printing costs are not paid for by the Government; (iv) non-deliverable reports provided to the Government for informational purposes which are suitable for publication in academic, technical, or professional journals and similar publications; and (v) review board presentations and conclusions in which a majority of the formal review board membership consists of JPL, Subcontractor, or First-tier Subcontractor representatives, where Government attendance is only incidental, and the Subcontract does not expressly require Government approval of the proceedings.

- (b) To the extent that it applies to First-tier Subcontractors, the Subcontractor will implement NASA Policy Guideline (NPG) 1490.5A, Procedural Guidance for Printing, Duplicating and Copying Management, for all printing, duplicating, copying, forms, and mail management related to the performance of this Subcontract.

Note 2: Requests for waivers to permit commercial printers to print "Government publications" in cases of exigencies or other appropriate circumstances shall be submitted by the Subcontractor to the JPL Subcontracts Manager for submission to the NASA Printing Management Officer through the Contracting Officer.

PROHIBITION OF SUBCONTRACTOR USE OF PRIVATELY OWNED AIRCRAFT IN SUBCONTRACT PERFORMANCE

[CT, FPNR&D, FPR&D, T&MC, LH/T&M, FPC, CREI, A-E, RSA – 09/04]

The Subcontractor, its employees, agents and First-tier Subcontractors, shall not use privately owned (noncommercial) aircraft in the performance of this Subcontract without prior approval of JPL. Any request for approval to use privately owned aircraft must include a certificate of insurance as evidence that the Subcontractor has in effect Aircraft Liability Insurance coverage of not less than \$5,000,000 for all deaths, injuries, and property damage arising from one accident or occurrence. The Subcontractor shall be required as a condition of JPL's approval to submit an endorsement naming the Institute as an additional insured in such aircraft liability insurance policy. The Subcontractor shall include this provision in any First-tier Subcontract involving travel subject to JPL approval or requiring that the First-tier Subcontractor utilize a privately owned (noncommercial) aircraft.

PROHIBITION OF SEGREGATED FACILITIES

CT, FP_NR&D, CIS, T&MC, LH/T&M, FPC, CREI, A-E – 09/04 FAR 52.222-21

(The following Article is applicable to Subcontracts where FAR 52.222-26, Equal Opportunity is applicable)
Incorporate by reference FAR 52.222-21, Prohibition of Segregated Facilities

RELEASE OF INFORMATION

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A-E, RSA – 09/04]

(This Article does not apply if the Article entitled "Release of Information - Preliminary Engineering Report (PER)" is applicable.)

- (a) The Subcontractor agrees that all information released by the Subcontractor for publicity or promotional purposes (e.g., news and photo releases, exhibit copy, motion picture scripts, advertising copy) directly related to the Subcontractor's work with and for JPL will be submitted to JPL for review for technical accuracy prior to issuance. (See enclosed form letter JPL 1737, "Release of Information.")
- (b) The Subcontractor agrees to insert this clause including this paragraph in all First-tier Subcontracts.

REQUIRED NOTICES

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, RSA – 09/04]

Unless otherwise specified in this Subcontract, any notice which the Subcontractor is required to provide to JPL under any provision of this Subcontract shall be directed to the JPL Subcontracts Manager or the Manager, Acquisition Division, JPL, or their authorized representatives.

RESPONSIBILITY FOR SUPPLIES

[FP-NR&D, FP-R&D - 09/04] [FAR 52.246-16 – 04/84]

- (a) Title to supplies furnished under this Subcontract shall pass to the Government upon formal acceptance by JPL, regardless of when or where JPL takes physical possession, unless the Subcontract specifically provides for earlier passage of title.
- (b) Unless the Subcontract specifically provides otherwise, risk of loss or damage to supplies shall remain with the Subcontractor until, and shall pass to JPL upon:
 - (1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or
 - (2) Acceptance by JPL or delivery of the supplies to JPL at the destination specified in the Subcontract, whichever is later, if transportation is f.o.b. destination.
- (c) Paragraph (a) above shall not apply to supplies that so fail to conform to Subcontract requirements as to give a right of rejection. The risk of loss of or damage to such nonconforming supplies remains with the Subcontractor until cure or acceptance. After cure or acceptance, paragraph (a) above shall apply.
- (d) Under paragraph (a) above, the Subcontractor shall not be liable for loss of or damage to supplies caused by the negligence of officers, agents, or employees of JPL acting within the scope of their employment.

RESTRICTIONS ON CERTAIN FOREIGN PURCHASES

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A-E – 09/04] [FAR 52.225- 13 – 07/00]

Incorporate by reference FAR 52.225- 13, Restrictions on Certain Foreign Purchases.

RESTRICTIONS ON FIRST-TIER SUBCONTRACTOR SALES

CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, CREI – 09/04] [FAR 3.503, 52.203-6 – 07/95]

(This Article is applicable to Subcontracts and First-tier Subcontracts exceeding \$100,000 for other than commercial items.)

Incorporate by reference FAR 52.203-6, Restrictions on Subcontractor Sales.

RIGHTS IN DATA – GENERAL

[CT, FP-NR&D, FP-R&D, LH/T&M, T&MC, RSA – 09/04] [FAR 52.227-14 – 06/87; NFS 1852.227-14 – 06/87]

(If the Article entitled "Existing Commercial Computer Software - Licensing" is applicable to this Subcontract, it shall apply in lieu of this Article regarding any acquisition of commercial computer software.)

- (a) Definitions.
 - (1) "Computer software," as used in this Article, means computer programs, computer data bases, and documentation thereof.
 - (2) "Data," as used in this Article, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data, and computer software. The term does not include information incidental to Subcontract administration, such as financial, administrative, cost, or pricing, or management information.
 - (3) "Form, fit, and function data," as used in this Article, means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, as well as data identifying source, size, configuration, mating, and attachment characteristics, functional characteristics, and performance requirements; except that for computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software.
 - (4) "Institute" means the California Institute of Technology as a party to this Subcontract.
 - (5) "JPL" means the Jet Propulsion Laboratory as the organizational element of the Institute having responsibility for administration of this Subcontract. JPL's rights under this Subcontract are rights of the California Institute of Technology as a party to this Subcontract.
 - (6) "Limited rights," as used in this Article, means the rights of the Government, or in support and furtherance of its Government Subcontract obligations, the Institute, in limited rights data as set forth in the Limited Rights Notice of subparagraph (g)(2) if included in this Article.

- (7) "Limited rights data," as used in this Article, means data (other than computer software) that embody trade secrets or are commercial or financial and confidential or privileged, to the extent that such data pertain to items, components, or processes developed at private expense, including minor modifications thereof.
 - (8) "Restricted computer software," as used in this Article, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software; including minor modifications of such computer software.
 - (9) "Restricted rights," as used in this Article, means the rights of the Government, and in support and in furtherance of its Government Subcontract obligations, the Institute, in restricted computer software, as set forth in a Restricted Rights Notice of subparagraph (g)(3) if included in this Article, or as otherwise may be provided in a collateral agreement incorporated in and made part of this Subcontract, including minor modifications of such computer software.
 - (10) "Technical data," as used in this Article, means data (other than computer software) that are of a scientific or technical nature.
 - (11) "Unlimited rights," as used in this Article, means the right of the Government, or in support and furtherance of its Government Subcontract obligations, the Institute, to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.
- (b) Allocation of Rights.
- (1) Except as provided in paragraph (c) of this Article regarding copyright, the Government and in support and furtherance of its Government Subcontract obligations, the Institute, shall have unlimited rights in:
 - (A) Data first produced in the performance of this Subcontract;
 - (B) Form, fit, and function data delivered under this Subcontract;
 - (C) Data delivered under this Subcontract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this Subcontract; and
 - (D) All other data delivered under this Subcontract unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (g) of this Article.
 - (2) The Subcontractor shall have the right to:
 - (A) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Subcontractor in the performance of this Subcontract, unless provided otherwise in paragraph (d) of this Article;
 - (B) Protect from unauthorized disclosure and use those data which are limited rights data or restricted computer software to the extent provided in paragraph (g) of this Article;
 - (C) Substantiate use of, add or correct limited rights, restricted rights, or copyright notices and to take other appropriate action, in accordance with paragraphs (e) and (f) of this Article; and
 - (D) Establish claim to copyright subsisting in data first produced in the performance of this Subcontract to the extent provided in subparagraph (c)(1) of this Article.
- (c) Copyright.
- (1) Data First Produced in the Performance of This Subcontract.
 - (A) Unless provided otherwise in paragraph (d) of this Article, the Subcontractor may establish, without prior approval of JPL, claim to copyright subsisting in scientific and technical articles based on or containing data first produced in the performance of this Subcontract and published in academic, technical or professional journals, symposia proceedings or similar works. The prior, express written permission of JPL is required to establish claim to copyright subsisting in all other data first produced in the performance of this Subcontract.
 - (B) When claim to copyright is made, the Subcontractor shall affix the applicable copyright or notices of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including the Prime Subcontract number) to the data when such data are delivered to JPL, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. (Acknowledgment shall

include a statement that "This work was performed for the Jet Propulsion Laboratory, California Institute of Technology, sponsored by the United States Government under a Prime Contract between the California Institute of Technology and NASA.")

- (C) For data other than computer software, the Subcontractor grants to the Government, and in support and furtherance of its Government Subcontract obligations, the Institute, any successor-in-interest of the Institute, or a successor Subcontractor to operate JPL, and others acting on their behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly by or on behalf of the Government. Any copyright license required in order to perform work under this First-tier Subcontract is freely transferable to any successor-in-interest of the Subcontractor, a successor Subcontractor to operate JPL, or the Government
- (D) For computer software, the Subcontractor grants to the Government, and in support and furtherance of its Government Subcontract obligations, the Institute, any successor-in-interest of the Institute, or a successor Subcontractor to operate JPL, and others acting on their behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly by or on behalf of the Government.
- (2) Data Not First Produced in the Performance of This Subcontract. The Subcontractor shall not, without prior written permission of JPL, incorporate in data delivered under this Subcontract any data not first produced in the performance of this Subcontract and which contains the copyright notice of 17 U.S.C. 401 or 402, unless the Subcontractor identifies such data and grants to the Government, and in support and furtherance of its Government Subcontract obligations, the Institute, or acquires on their behalf, a license of the same scope as set forth in subparagraph (c)(1) of this Article; provided, however, that if such data are computer software, the Subcontractor grants to the Government and in support and furtherance of its Government Subcontract obligations, the Institute, or acquires on their behalf, a paid-up nonexclusive irrevocable worldwide license as set forth in subparagraph (g)(3) of this Article.
- (3) Removal of Copyright Notices. JPL agrees not to remove any copyright notices placed on data pursuant to this paragraph (c), and to include such notices on all reproductions of the data.
- (d) Release, Publication and Use of Data.
 - (1) The Subcontractor shall have the right to use, release to others, reproduce, distribute, or publish any data other than computer software first produced or specifically used by the Subcontractor in the performance of this Subcontract, except to the extent such data may be subject to the Federal export control or national security laws or regulations, or unless otherwise provided in this paragraph of this Article or expressly set forth in this Subcontract.
 - (2) The Subcontractor agrees that to the extent it receives or is given access to data necessary for the performance of this Subcontract that contain restrictive markings, the Subcontractor shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by JPL.
 - (3)
 - (A) The Subcontractor agrees not to establish claim to copyright or publish or release to others any computer software first produced in the performance of this Subcontract without JPL's prior written permission.
 - (B) If the Government desires to obtain copyright in computer software first produced in the performance of this Subcontract for which permission to copyright has not been granted to the Subcontractor as set forth in subdivision (d)(3)(A) of this Article, the Contracting Officer or the Institute may direct the Subcontractor to assert, or authorize the assertion of, claim to copyright in said data and to assign, or obtain the assignment of, such copyright to the Government or its designated assignee.
 - (C) Whenever the word "establish" is used in this clause, with reference to a claim to copyright, it shall be construed to mean "assert."
- (e) Unauthorized Marking of Data.
 - (1) Notwithstanding any other provisions of this Subcontract concerning inspection or acceptance, if any data delivered under this Subcontract are marked with the notices specified in subparagraph (g)(2) or (g)(3) of this Article and use of such is not authorized by this Article, or if such data bears any other restrictive or limiting markings not authorized by this Subcontract, JPL may at any time either return the data to the

Subcontractor, or cancel or ignore the markings. However, the following procedures shall apply prior to canceling or ignoring the markings:

- (A) JPL shall make written inquiry to the Subcontractor affording the Subcontractor 30 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;
 - (B) If the Subcontractor fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 30-day period (or a longer time not exceeding 90 days approved in writing by the Contracting Officer through JPL for good cause shown), the Government or JPL shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.
 - (C) If the Subcontractor provides written justification to substantiate the propriety of the markings within the period set in subdivision (e)(1)(A) of this Article, the Contracting Officer through JPL shall consider such written justification and determine whether or not the markings are to be canceled or ignored. If the Contracting Officer through JPL determines that the markings are authorized, the Subcontractor shall be so notified in writing. If the Contracting Officer through JPL determines, with concurrence of NASA, that the markings are not authorized, the Contracting Officer through JPL shall furnish the Subcontractor a written determination, which determination shall become the final Government decision regarding the appropriateness of the markings unless the Subcontractor files suit in a court of competent jurisdiction within 90 days of receipt of the Contracting Officer's decision. The Government and JPL shall continue to abide by the markings under this subdivision (e)(1)(C) until final resolution of the matter either by the Contracting Officer's determination becoming final (in which instance the Government or JPL shall thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.
- (2) The time limits in the procedures set forth in subparagraph (e)(1) of this Article may be modified in accordance with NASA regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request there under.
 - (3) This paragraph (e) does not apply if this Subcontract is for a major system or for support of a major system by a civilian agency other than NASA and the U.S. Coast Guard agency subject to the provisions of Title III of the Federal Property and Administrative Services Act of 1949.
 - (4) (Reserved)
- (f) Omitted or Incorrect Markings.
- (1) Data delivered to the Government or JPL without either the limited rights or restricted rights notice as authorized by paragraph (g) of this Article, or the copyright notice required by paragraph (c) of this Article, shall be deemed to have been furnished with unlimited rights, and the Government and the Institute assume no liability for the disclosure, use, or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the Government or JPL, the Subcontractor may request, within six months (or longer time approved by JPL for good cause shown) after delivery of such data, permission to have notices placed on qualifying data at the Subcontractor's expense, and JPL may agree to do so if the Subcontractor:
 - (A) Identifies the data to which the omitted notice is to be applied;
 - (B) Demonstrates that the omission of the notice was inadvertent;
 - (C) Establishes that the use of the proposed notice is authorized; and
 - (D) Acknowledges that the Government and the Institute have no liability with respect to the disclosure, use, or reproduction of any such data made prior to the addition of the notice or resulting from the omission of the notice.
 - (2) JPL may also:
 - (A) Permit correction at the Subcontractor's expense of incorrect notices if the Subcontractor identifies the data on which correction of the notice is to be made, and demonstrates that the correct notice is authorized; or
 - (B) Correct any incorrect notices.

(g) Protection of Limited Rights Data and Restricted Computer Software.

- (1) When data other than that listed in subdivisions (b)(1)(A), (B), and (C) of this Article are specified to be delivered under this Subcontract and qualify as either limited rights data or restricted computer software, if the Subcontractor desires to continue protection of such data, the Subcontractor shall withhold such data and not furnish them to JPL under this Subcontract. As a condition to this withholding, the Subcontractor shall identify the data being withheld and furnish form, fit, and function data in lieu thereof. Limited rights data that are formatted as a computer database for delivery to JPL are to be treated as limited rights data and not restricted computer software.
- (2) Notwithstanding paragraph (g)(1) of this Article, the Subcontract may identify and specify the delivery of limited rights data, or JPL or the Contracting Officer may require by written request the delivery of limited rights data that has been withheld or would otherwise be withholdable. If delivery of such data is so required, the Subcontractor may affix the following "Limited Rights Notice" to the data and the Institute and the Government will thereafter treat the data, subject to the provisions of paragraphs (e) and (f) of this Article, in accordance with such Notice:

LIMITED RIGHTS NOTICE

- (a) These data are submitted with limited rights under Government contract No. NAS7-03001 (and JPL First-tier Subcontract No. _____). These data may be reproduced and used by the Institute or the Government with the express limitation that they will not, without written permission of the Subcontractor, be used for purposes of manufacture nor disclosed outside the Institute or the Government; except that the Institute or the Government may disclose these data outside the Institute or the Government for the following purposes, if any, provided that the Institute or the Government makes such disclosure subject to prohibition against further use and disclosure:

- (1) Use by support service Subcontractors.
- (2) (RESERVED)

- (b) This Notice shall be marked on any reproduction of these data, in whole or in part.

(And of notice)

(3)

- (A) Notwithstanding paragraph (g)(1) of this Article, the Subcontract may identify and specify the delivery of restricted computer software, or JPL or the Subcontracting Officer may require by written request the delivery of restricted computer software that has been withheld or would otherwise be withholdable. If delivery of such computer software is so required, the Subcontractor may affix the following "Restricted Rights Notice" to the computer software and the Institute and the Government will thereafter treat the computer software, subject to the provisions of paragraphs (e) and (f) of this Article, in accordance with the Notice:

RESTRICTED RIGHTS NOTICE

- (a) This computer software is submitted with restricted rights under Government contract No. NAS7-03001 (and JPL First-tier Subcontract No. _____). It may not be used, reproduced, or disclosed by the Institute or the Government except as provided in paragraph (b) of this Notice or as otherwise expressly stated in the Subcontract.

- (b) This computer software may be:

- (1) Used or copied for use in or with the computer or computers for which it was acquired, including use at any Institute or Government installation to which such computer or computers may be transferred;
- (2) Used or copied for use in a backup computer if any computer for which it was acquired is inoperative;
- (3) Reproduced for safekeeping (archives) or backup purposes;
- (4) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating restricted computer software are made subject to the same restricted rights;

- (5) Disclosed to and reproduced for use by support service Subcontractors in accordance with subparagraphs (b)(1) through (4) of this Article, provided the Institute or the Government makes such disclosure or reproduction subject to these restricted rights; and
 - (6) Used or copied for use in or transferred to a replacement computer.
 - (c) Notwithstanding the foregoing, if this computer software is published copyrighted computer software, it is licensed to the Institute and the Government, without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this Article.
 - (d) Any other rights or limitations regarding the use, duplication, or disclosure of this computer software are to be expressly stated in, or incorporated in, the Subcontract.
 - (e) This Notice shall be marked on any reproduction of this computer software, in whole or in part.
- (End of notice)

(B) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form Notice may be used in lieu thereof:

RESTRICTED RIGHTS NOTICE - SHORT FORM

Use, reproduction, or disclosure is subject to restrictions set forth in Contract No. NAS7-03001 (and First-tier Subcontract No. _____ with [name of First-tier Subcontractor]).

(End of notice)

- (C) If restricted computer software is delivered with the copyright notice of 17 U.S.C. 401, it will be presumed to be published copyrighted computer software licensed to the Institute and the Government without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this Article, unless the Subcontractor includes the following statement with such copyright notice: "Unpublished - rights reserved under the Copyright Laws of the United States."
- (f) First-tier Subcontracting. The Subcontractor has the responsibility to obtain from its First-tier Subcontractors all data and rights therein necessary to fulfill the Subcontractor's obligations to the Government and the Institute under this Subcontract. If a First-tier Subcontractor refuses to accept terms affording the Government or the Institute such rights, the Subcontractor shall promptly bring such refusal to the attention of JPL and not proceed with First-tier Subcontract award without further authorization.
- (g) Relationship to Patents. Nothing contained in this Article shall imply a license to the Government or the Institute under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government or the Institute.
- (h) Inspection of Data Withheld. The Subcontractor agrees, except as may be otherwise specified in this Subcontract for specific data items listed as not subject to this paragraph, that the Contracting Officer, an authorized representative, or JPL may, up to three years after acceptance of all items to be delivered under this Subcontract, inspect at the Subcontractor's facility any data withheld pursuant to subparagraph (g)(1) of this Article, for purposes of verifying the Subcontractor's assertion pertaining to the limited rights or restricted rights status of the data or for evaluating work performance. Where the first-tier First-tier Subcontractor whose data are to be inspected demonstrates to the Contracting Officer that there would be a possible conflict of interest if the inspection were made by a particular representative, the Contracting Officer shall designate an alternate inspector.

RIGHTS IN TECHNICAL PROPOSAL DATA

[CT, FP-NR&D, FP-R&D, LH/T&M, T&MC, CREI, RSA – 09/04] [FAR 52.227-23 – 06/87]

(This Article applies to Subcontracts resulting from a proposal containing technical data. The Article does not cover rights to commercial or financial information contained in the successful proposal.)

It is agreed that as a condition of the award of this Subcontract, and notwithstanding the conditions of any notice appearing thereon, the Government and the Institute shall have the right to use, duplicate, and disclose, and have others so do, for any purpose whatsoever, the technical data contained in the proposals upon which this Subcontract and any future modifications are based.

SMALL BUSINESS FIRST-TIER SUBCONTRACTING PLAN

[A&E, CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI – 09/04] [FAR 52.219-9 – 01/02]

(This Article is applicable if the basic Subcontract or any separate modification exceeds \$500,000 [\$1,000,000 for construction of any public facility], except it does not apply to Subcontracts with small businesses or orders under GSA Subcontracts. Work performed outside the United States is exempt from the requirements of this Article.)

- (a) If there will be any First-tier Subcontracting under this Subcontract and the basic or any modification exceeds \$500,000, (\$1,000,000 for construction of any public facility), the Subcontractor agrees to submit for JPL approval a First-tier Subcontracting Plan (Plan) that separately addresses First-tier Subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business concerns, small disadvantaged business, and women-owned small business concerns. The Subcontractor further agrees to provide a written update to the Plan for every modification exceeding \$500,000 (\$1,000,000 for construction of a public facility). JPL's approval will be based on the requirements in JPL form 0294 entitled "Requirements for a Subcontracting Plan." The approved Plan and approved updates will be deemed incorporated into this Subcontract.
- (b) If a Plan is required under this Subcontract, SF 294, "Subcontracting Report for Individual Contracts," and SF 295, "Summary Subcontract Report," are deliverables, which must be submitted by the Subcontractor to the JPL Subcontracts Manager in accordance with the instructions on the forms.
- (c) It is understood and agreed that the failure of the Subcontractor to comply in good faith with the Article of this Subcontract entitled "Utilization of Small, Small Disadvantaged, and Women-Owned Small Business Concerns," or with any Plan required to be included in this Subcontract, shall be a material breach of this Subcontract.

SMALL BUSINESS FIRST-TIER SUBCONTRACTING REPORTING

[A&E, CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI – 09/04] [NFS 1852.219-75 – 05/99]

(This Article is applicable if the basic Subcontract or any separate modification exceeds \$500,000 [\$1,000,000 for construction of any public facility], except it does not apply to Subcontracts with small businesses or orders under GSA Subcontracts. Work performed outside the United States is exempt from the requirements of this Article.)

- (a) The Subcontractor shall submit the Summary First-tier Subcontract Report (Standard Form (SF) 295) semiannually for the reporting periods specified in block 4 of the form. All other instructions for SF 295 remain in effect.
- (b) The Subcontractor shall include this clause in all First-tier Subcontracts that include the Article titled "Small Business Subcontracting Plan" (FAR 52.219-9)

STOP WORK ORDER

[CT, FP-NR&D, FP-R&D, A-E – 09/04] [FAR 52.242-15 - 08/89]

- (a) JPL may, at any time, by written order to the Subcontractor, require the Subcontractor to stop all, or any part, of the work called for by this Subcontract for a period of 90 days after the order is delivered to the Subcontractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop work order issued under this Article. Upon receipt of the order, the Subcontractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop work order is delivered to the Subcontractor, or within any extension of that period to which the parties shall have agreed, JPL shall either:
 - (1) Cancel the stop work order; or
 - (2) Terminate the work covered by such order either for convenience of the Institute or the Government or, if appropriate, for default.
- (b) If a stop work order issued under this Article is canceled or the period of the order or any extension thereof expires, the Subcontractor shall resume work. JPL shall make an equitable adjustment in the delivery schedule, the Subcontract amount, and in any other provisions of the Subcontract that may be affected, and the Subcontract shall be modified, in writing, accordingly, if:
 - (1) The stop work order results in an increase in the time required for, or in the Subcontractor's cost properly allocable to, the performance of any part of this Subcontract; and

- (2) The Subcontractor asserts a claim for the adjustment within 30 days after the end of the period of work stoppage; provided that, if JPL decides the facts justify the action, it may receive and act upon the claim asserted at any time before final payment under this Subcontract.
- (c) If a stop work order is not canceled and the work covered by the order is terminated for the convenience of the Institute or the Government, JPL shall allow reasonable costs resulting from the stop work order in arriving at the termination settlement.
- (d) If a stop work order is not canceled and the work covered by the order is terminated for default, JPL shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop work order.

SUBCONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A-E, RSA – 09/04 [FAR 22.305 - 7/95; 52.222-4 - 09/00]

(Work performed outside the United States is exempt from the requirements of this Article.)

- (a) This provision is not applicable to Subcontracts for supplies, materials, or articles ordinarily available in the open market, Subcontracts for transportation by land, air, or water, or for the transmission of intelligence, Subcontracts of \$100,000 or less, Subcontracts to be performed solely within a foreign country or within a territory under United States jurisdiction other than a state, the District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf Lands as defined in the Outer Continental Shelf Lands Act, American Samoa, Guam, Wake Island, and Johnson Island, and Subcontracts (or portions of Subcontracts) for supplies in connection with which any required services are merely incidental to the Subcontract and do not require substantial employment of laborers or mechanics, exempt under regulations of the Secretary of Labor (29 CFR 5.15), Subcontracts requiring work to be done solely in accordance with the Walsh-Healey Public Contract Act, and Subcontracts for commercial items.
- (b) FAR clause 52.222-4 (Sept 2000) is hereby incorporated by reference in total, except that:
 - (1) The words “JPL Subcontracts Manager or JPL’s Contracting Officer” shall be substituted for the words “Contracting Officer” wherever they appear;
 - (2) The word “Subcontractor” shall be substituted for the words “Prime Contractor” wherever they appear; and
 - (3) The words “with JPL” shall be substituted for the words “Federal Contract with the same Prime Contractor” wherever they appear.

SUBCONTRACTOR AND FIRST-TIER SUBCONTRACTOR COST OR PRICING DATA, OR INFORMATION OTHER THAN COST OR PRICING DATA AND PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, A-E CREI– 09/04] [FAR 15.403-4 - 10/00; 52.215-11 - 10/97; 52.215-12 - 10/97; 52.215-13 - 10/97; 52.215-20 - 10/97; 52.215-21 - 10/97]

(This Article is applicable if either the basic Subcontract or any modification exceeds \$550,000.)

- (a) Subcontractor Cost or Pricing Data.
 - (1) Whenever the negotiated price of the basic Subcontract, or the negotiated price of any change, or other modification to this Subcontract is expected to exceed \$550,000, the Subcontractor agrees to furnish the Institute certified cost or pricing data, unless a waiver applies or a determination is made that an exception applies (the price is based on adequate price competition, prices set by law or regulation, or the Subcontract is for a commercial item). Whenever certified cost or pricing data are required, the Subcontractor agrees to furnish the data in the format requested by JPL or if JPL does not so specify, per Table 15-2 of FAR 15.408 and agrees to submit the JPL certificate form JPL 2496 or equivalent as soon as practicable after agreement on price but before award.
 - (2) Exceptions to Cost or Pricing Data.
 - (A)
 - (iii) Basic Subcontracts. In lieu of submitting cost or pricing data for the basic Subcontract, offerors may submit a written request for exception by submitting the information described under paragraph (B), below.
 - (iv) Subcontract Modifications. In lieu of submitting cost or pricing data for modifications under this Subcontract, for price adjustments expected to exceed \$550,000 on the date of the agreement on

price or the date of the award, whichever is later, the Subcontractor may submit a written request for exception by submitting the information described under paragraph (B), below.

- (v) JPL may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable.

(B) The relevant part of the following information is to be submitted when requesting an exception:

- (i) Identification of the law or regulation establishing the price offered. If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.
- (ii) For a commercial item exception, the offeror shall submit, at a minimum, information on prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the price for this acquisition. Such information may include:
 - a. For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the proposal is being submitted. Provide a copy or describe current discount policies and price lists (published or unpublished), e.g., wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities.
 - b. For market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market.
 - c. For items included on an active Federal Supply Service Multiple Award Schedule or any other Federal Government Subcontract, proof that an exception has been granted for the schedule item.
- (iii) Information on modifications of Subcontracts or First-tier Subcontracts for commercial items. If (i) the original Subcontract or First-tier Subcontract was granted an exception from cost or pricing data requirements because the price agreed upon was based on adequate price competition, or prices set by law or regulation, or was a Subcontract or First-tier Subcontract for a commercial item; and (ii) the modification (to the Subcontract or First-tier Subcontract) is not exempted based on one of these exceptions, then the Subcontractor may provide information to establish that the modification would not change the Subcontract or First-tier Subcontract from a Subcontract or First-tier Subcontract for the acquisition of a commercial item to a Subcontract or First-tier Subcontract for the acquisition of an item other than a commercial item.

(C) The Offeror/Subcontractor grants JPL or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this provision, and the reasonableness of price. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the Offeror's/Subcontractor's determination of the prices to be offered in the catalog or marketplace.

(b) First-tier Subcontractor Cost or Pricing Data.

- (1) Before awarding any First-tier Subcontract expected to exceed \$550,000 when entered into, or before pricing any First-tier Subcontract modification involving a pricing adjustment expected to exceed \$550,000, the Subcontractor shall require the First-tier Subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless the First-tier Subcontract or modification is eligible for an exception listed in paragraph (a), above.
- (2) The requirement for obtaining certified cost or pricing data with respect to any First-tier Subcontract change or other modification does not apply to any First-tier Subcontract change or modification, at any tier, where this Subcontract is a firm fixed-price or firm fixed-price with escalation Subcontract unless such change or other modification results from a Subcontract change or other modification to this Subcontract, nor does it apply to a First-tier Subcontract change or other modification, at any tier, where this Subcontract is not firm fixed-price or firm fixed-price with escalation, unless the price for such change or modification becomes reimbursable under this Subcontract.

- (3) The Subcontractor shall require the First-tier Subcontractor to certify in substantially the form prescribed in FAR Part 15, and any corresponding implementing or supplementing provisions in the NFS, that, to the best of its knowledge and belief, the data submitted under subparagraph (b)(1) above were accurate, complete, and current as of the date of agreement on the negotiated price of the First-tier Subcontract or First-tier Subcontract modification.
- (4) In each First-tier Subcontract that exceeds \$550,000 when entered into, the Subcontractor shall insert either:
 - (A) The substance of this Article, including this paragraph (4), if paragraph (b)(1) above requires submission of cost or pricing data for the First-tier Subcontract; or
 - (B) The substance of the clause at FAR 52.215-13, "Subcontractor Cost or Pricing Data - Modifications," including any corresponding implementing or supplementing provisions in the NFS.
- (c) Price Reduction for Defective Cost or Pricing Data.
 - (1) If any price, including profit or fee, negotiated in connection with this Subcontract, or any cost reimbursable under this Subcontract, was increased by any significant amount because (i) the Subcontractor or a First-tier Subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data, (ii) a First-tier Subcontractor or prospective First-tier Subcontractor furnished the Subcontractor cost or pricing data that were not complete, accurate, and current as certified in the Subcontractor's Certificate of Current Cost or Pricing Data, or (iii) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the Subcontract shall be modified to reflect the reduction.
 - (2) Any reduction in the Subcontract price under paragraph (1) above due to defective data from a prospective First-tier Subcontractor that was not subsequently awarded the First-tier Subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (i) the actual First-tier Subcontract or (ii) the actual cost to the Subcontractor, if there was no First-tier Subcontract, was less than the prospective First-tier Subcontract cost estimate submitted by the Subcontractor; provided, that the actual First-tier Subcontract price was not itself affected by defective cost or pricing data.
 - (3)
 - (A) If the Contracting Officer determines under paragraph (1) of this Article that a price or cost reduction should be made, the Subcontractor agrees not to raise the following matters as a defense:
 - (i) The Subcontractor or First-tier Subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the Subcontract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.
 - (ii) The Institute should have known that the cost or pricing data in issue were defective even though the Subcontractor or First-tier Subcontractor took no affirmative action to bring the character of the data to the attention of JPL.
 - (iii) The Subcontract was based on an agreement about the total cost of the Subcontract and there was no agreement about the cost of each item procured under the Subcontract.
 - (iv) The Subcontractor or First-tier Subcontractor did not submit a Certificate of Current Cost or Pricing Data.
 - (B)
 - (i) Except as prohibited by subdivision (c)(3)(B)(ii) of this Article, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a Subcontract price reduction if:
 - a. The Subcontractor certifies to the Contracting Officer that, to the best of the Subcontractor's knowledge and belief, the Subcontractor is entitled to the offset in the amount requested; and
 - b. The Subcontractor proves that the cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data and that the data were not submitted before such date.
 - (ii) An offset shall not be allowed if:

- a. The understated data were known by the Subcontractor to be understated before the "as of" date specified on its Certificate of Current Cost or Pricing Data or
 - b. The Government proves that the facts demonstrate that the Subcontract price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on its Certificate of Current Cost or Pricing Data.
- (d) If any reduction in the Subcontract price under this Article reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Subcontractor shall be liable to and shall indemnify the Institute for costs incurred by the Institute involved in repayments to the Government resulting from the Subcontractor's defective pricing including:
- (1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Subcontractor to the date the Government is repaid by the Institute at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and
 - (2) A penalty equal to the amount of the overpayment, if the Subcontractor or First-tier Subcontractor knowingly submitted cost or pricing data which were incomplete, inaccurate, or noncurrent.

SUBCONTRACTOR EMPLOYMENT OF JPL EMPLOYEES' CHILDREN AND RELATIVES (SUBCONTRACTOR'S EMPLOYEES IN RESIDENCE AT JPL)

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M – 09/04]

(Work performed outside the United States is exempt from the requirements of this Article.)

- (a) When work under this Subcontract is to be performed at any JPL-controlled facility, the Subcontractor agrees to require applicants for such work, as part of the application process, to identify any relatives they know to be employed at JPL. The Subcontractor also agrees to notify the cognizant Subcontracts Manager prior to hiring an applicant who so identifies a relative. The Subcontractor agrees to abide by JPL's determination as to whether the applicant may be assigned to a particular JPL organization.
- (b) The term "relatives" means parents, stepparents, grandparents, sisters, brothers, spouse/same-sex-domestic-partner, children, stepchildren, grandchildren, aunts, uncles, nieces, nephews, legal wards, and spouse's parents, grandparents, sisters and brothers.

SUBCONTRACTOR INSPECTION REQUIREMENTS

[FP-NR&D – 09/04] [FAR 52.246-1 – 04/84]

(This Article is applicable when the Subcontract amount is \$100,000 or less.)

- (a) The Subcontractor is responsible for performing or having performed all inspections and tests necessary to substantiate that the supplies or services furnished under this Subcontract conform to Subcontract requirements, including any applicable technical requirements for specified manufacturers' parts. This Article takes precedence over any JPL inspection and testing required in the Subcontract's specifications, except for specialized inspections or tests specified to be performed solely by JPL.
- (b) JPL may reject and hold at the Subcontractor's expense, subject to the Subcontractor's disposal, all items not conforming to applicable specifications, drawings, samples, or descriptions. Without limiting any other rights it may have, JPL at its option may require the Subcontractor (i) to repair or replace at the Subcontractor's expense any item of supplies ordered which fails to meet the requirements of applicable specifications, drawings, samples, or descriptions; or (ii) to refund the price of any such item.

SUBCONTRACTOR RECRUITING ACTIVITY

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC – 09/04]

(Work performed outside the United States is exempt from the requirements of this Article.)

Except as may be specifically authorized by JPL in writing, during the performance of this Subcontract the Subcontractor shall refrain from engaging in any activity related to employment recruiting on any of the premises of JPL.

TECHNICAL DIRECTION

FP-NR&D, LH/T&M, T&MC, FPC, A-E, FP-R&D, RSA – 09/04 NFS 1852.242-70 – 09/93

- (a) Performance of the work under this Subcontract is subject to the written technical direction of the Contract Technical Manager (CTM). "Technical direction" means a directive to the Subcontractor that approves approaches, solutions, designs, or refinements; fills in details or otherwise completes the general description of work or documentation items; shifts emphasis among work areas or tasks; or furnishes similar instruction to the Subcontractor. Technical direction includes requiring studies and pursuit of certain lines of inquiry regarding matters within the general tasks and requirements of this Subcontract.
- (b) The CTM does not have the authority to, and shall not, issue any instruction purporting to be technical direction that--
 - (1) Constitutes an assignment of additional work outside the statement of work;
 - (2) Constitutes a change as defined in the changes clause;
 - (3) Constitutes a basis for any increase or decrease in the total estimated Subcontract cost, the fixed fee (if any), or the time required for Subcontract performance;
 - (4) Changes any of the expressed terms, conditions, or specifications of the Subcontract; or
 - (5) Interferes with the Subcontractor's rights to perform the terms and conditions of the Subcontract.
- (c) All technical direction shall be issued in writing by the CTM.
- (d) The Subcontractor shall proceed promptly with the performance of technical direction duly issued by the CTM in the manner prescribed by this clause and within the CTM's authority. If, in the Subcontractor's opinion, any instruction or direction by the CTM falls within any of the categories defined in paragraph (b) of this clause, the Subcontractor shall not proceed but shall notify the Contracting Officer in writing within 5 working days after receiving it and shall request the Contracting Officer to take action as described in this clause. Upon receiving this notification, the Contracting Officer shall either issue an appropriate Subcontract modification within a reasonable time or advise the Subcontractor in writing within 30 days that the instruction or direction is--
 - (1) Rescinded in its entirety; or
 - (2) Within the requirements of the Subcontract and does not constitute a change under the changes clause of the Subcontract, and that the Subcontractor should proceed promptly with its performance.
- (e) Any action(s) taken by the Subcontractor in response to any direction given by any person other than the Subcontracts Manager or the CTM shall be at the Subcontractor's risk.

TERMINATION FOR CONVENIENCE – FIXED-PRICE (LONG FORM)

[FP-NR&D – 09/04] [FAR 52.249-2 – 09/96]

(The following Article shall apply only when the Subcontract exceeds \$100,000.)

- (a) JPL may terminate performance of work under this Subcontract in whole or, from time to time, in part if JPL determines that a termination is in the interest of the Institute or the Government. JPL shall terminate by delivering to the Subcontractor a Notice of Termination specifying the extent of termination and the effective date.
- (b) After receipt of a Notice of Termination, and except as directed by JPL, the Subcontractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this Article:
 - (1) Stop work as specified in the notice.
 - (2) Place no further First-tier Subcontracts or orders (referred to as First-tier Subcontracts in this Article) for materials, services, or facilities, except as necessary to complete the continued portion of the Subcontract.
 - (3) Terminate all First-tier Subcontracts to the extent they relate to the work terminated.
 - (4) Assign to JPL, as directed by JPL, all right, title, and interest of the Subcontractor under the First-tier Subcontracts terminated, in which case JPL shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
 - (5) With approval or ratification to the extent required by JPL, settle all outstanding liabilities and termination settlement proposals arising from the termination of First-tier Subcontracts; the approval or ratification will be final for purposes of this Article.

- (6) As directed by JPL, transfer title to the Government and deliver to JPL (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (ii) the completed or partially completed plans, drawings, information, and other property that, if the Subcontract had been completed, would be required to be furnished to JPL.
 - (7) Complete performance of the work not terminated.
 - (8) Take any action that may be necessary, or that JPL may direct, for the protection and preservation of the property related to this Subcontract that is in the possession of the Subcontractor and in which the Government has or may acquire an interest.
 - (9) Use its best efforts to sell, as directed or authorized by JPL, any property of the types referred to in subparagraph (6) above; provided, however, that the Subcontractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, JPL. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by JPL under this Subcontract, credited to the price or cost of the work, or paid in any other manner directed by JPL.
- (c) The Subcontractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Subcontractor within this 120-day period.
 - (d) After expiration of the plant clearance period as defined in Subpart 45.6 of FAR and any corresponding implementing or supplementing provisions in the NFS, the Subcontractor may submit to JPL a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by JPL. The Subcontractor may request JPL to remove those items or enter into an agreement for their storage. Within 15 days of such request, JPL will accept those items and remove them or enter into a storage agreement. JPL may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.
 - (e) After termination, the Subcontractor shall submit a final termination settlement proposal to JPL in the form and with the certification prescribed by JPL. The Subcontractor shall submit the proposal promptly, but no later than six months from the effective date of termination, unless extended in writing by JPL upon written request of the Subcontractor within this six- month period. However, if JPL determines that the facts justify it, a termination settlement proposal may be received and acted on after six months or any extension. If the Subcontractor fails to submit the proposal within the time allowed, JPL may determine, on the basis of information available, the amount, if any, due the Subcontractor because of the termination and shall pay the amount determined.
 - (f) Subject to paragraph (e) above, the Subcontractor and JPL may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (f) or paragraph (g) below, exclusive of costs shown in subparagraph (g)(3) below, may not exceed the total Subcontract price as reduced by (i) the amount of payments previously made and (ii) the Subcontract price of work not terminated. The Subcontract shall be amended, and the Subcontractor paid the agreed amount. Paragraph (g) below shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.
 - (g) If the Subcontractor and JPL fail to agree on the whole amount to be paid because of the termination of work, JPL shall pay the Subcontractor the amounts determined by JPL as follows, but without duplication of any amounts agreed on under paragraph (f) above:
 - (1) The Subcontract price for completed supplies or services accepted by JPL (or sold or acquired under subparagraph (b)(8) above) not previously paid for, adjusted for any saving of freight and other charges.
 - (2) The total of:
 - (A) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid under subparagraph (g)(1) above;
 - (B) The cost of settling and paying termination settlement proposals under terminated First-tier Subcontracts that are properly chargeable to the terminated portion of the Subcontract if not included in subdivision (A) above; and
 - (C) A sum, as profit on subdivision (A) above, determined by JPL under FAR 49.202 and any corresponding implementing or supplementing provisions in the NFS, in effect on the date of this Subcontract, to be

fair and reasonable; however, if it appears that the Subcontractor would have sustained a loss on the entire Subcontract had it been completed, JPL shall allow no profit under this subdivision (C) and shall reduce the settlement to reflect the indicated rate of loss.

- (3) The reasonable costs of settlement of the work terminated, including:
 - (A) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
 - (B) The termination and settlement of First-tier Subcontracts (excluding the amounts of such settlements); and
 - (C) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.
- (h) Except for normal spoilage, and except to the extent that JPL or the Government expressly assumed the risk of loss, JPL shall exclude from the amounts payable to the Subcontractor under paragraph (g) above, the fair value, as determined by JPL, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to JPL or to a Subcontracts Manager.
- (i) The cost principles and procedures of Part 31 of FAR and any corresponding implementing or supplementing provisions in the NFS, in effect on the date of this Subcontract, shall govern all costs claimed, agreed to, or determined under this Article.
- (j) In arriving at the amount due the Subcontractor under this Article, there shall be deducted:
 - (1) All unliquidated advance or other payments to the Subcontractor under the terminated portion of this Subcontract;
 - (2) Any claim which JPL has against the Subcontractor under this Subcontract; and
 - (3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Subcontractor or sold under the provisions of this Article and not recovered by or credited to JPL.
- (k) If the termination is partial, the Subcontractor may file a proposal with JPL for an equitable adjustment of the price(s) of the continued portion of the Subcontract. JPL shall make any equitable adjustment agreed upon. Any proposal by the Subcontractor for an equitable adjustment under this Article shall be requested within 90 days from the effective date of termination unless extended in writing by JPL.
- (l)
 - (1) JPL may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Subcontractor for the terminated portion of the Subcontract, if JPL believes the total of these payments will not exceed the amount to which the Subcontractor will be entitled.
 - (2) If the total payments exceed the amount finally determined to be due, the Subcontractor shall repay the excess to JPL upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Subcontractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Subcontractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by JPL because of the circumstances.
- (m) Unless otherwise provided in this Subcontract or by statute, the Subcontractor shall maintain all records and documents relating to the terminated portion of this Subcontract for three years after final settlement. This includes all books and other evidence bearing on the Subcontractor's costs and expenses under this Subcontract. The Subcontractor shall make these records and documents available to JPL and the Government, at the Subcontractor's office, at all reasonable times, without any direct charge. If approved by JPL, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

TERMINATION FOR CONVENIENCE – FIXED-PRICE (SHORT FORM)

[FP-NR&D – 09/04] [FAR 52.249-1 – 04/84]

(The following Article shall apply when the Subcontract is for \$100,000 or less.)

The Institute or the Government, by written notice, may terminate this Subcontract, in whole or in part, when it is in the Institute's or the Government's interest. If this Subcontract is for supplies and is so terminated, the rights, duties and obligations of the parties, including compensation, to the Subcontractor, shall be in accordance with Part 49 of FAR and any corresponding implementing or supplementing provisions in the NFS in effect on the date of this Subcontract. To the extent that this Subcontract is for services and is so terminated, the Institute shall be liable only for payment in accordance with the payment provisions of this Subcontract for services rendered and accepted prior to the effective date of termination.

TERMINATION FOR DEFAULT

[FP-NR&D - 09/04] [FAR 52.249-8 – 04/84]

(a)

- (1) JPL may, subject to paragraphs (c) and (d) below, by written notice of default to the Subcontractor, terminate this Subcontract in whole or in part if the Subcontractor fails to:
 - (A) Deliver the supplies or to perform the services within the time specified in this Subcontract or any extension;
 - (B) Make progress, so as to endanger performance of this Subcontract (but see subparagraph (a)(2) below); or
 - (C) Perform any of the other provisions of this Subcontract (but see subparagraph (a)(2) below).
- (2) JPL's right to terminate this Subcontract under subdivisions (1)(B) and (1)(C) above, may be exercised if the Subcontractor does not cure such failure within 10 days (or more if authorized in writing by JPL) after receipt of the notice from JPL specifying the failure.

- (b) If JPL terminates this Subcontract in whole or in part, it may acquire, under the terms and in the manner JPL considers appropriate, supplies or services similar to those terminated, and the Subcontractor will be liable to JPL for any excess costs for those supplies or services. However, the Subcontractor shall continue the work not terminated.
- (c) Except for defaults of First-tier Subcontractors at any tier, the Subcontractor shall not be liable for any excess costs if the failure to perform the Subcontract arises from causes beyond the control and without the fault or negligence of the Subcontractor. Examples of such causes include (i) acts of God or of the public enemy, (ii) acts of the Government in either its sovereign or contractual capacity, (iii) fires, (iv) floods, (v) epidemics, (vi) quarantine restrictions, (vii) strikes, (viii) freight embargoes, and (ix) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Subcontractor.
- (d) If the failure to perform is caused by the default of a First-tier Subcontractor at any tier, and if the cause of the default is beyond the control of both the Subcontractor and First-tier Subcontractor, and without the fault or negligence of either, the Subcontractor shall not be liable for any excess costs for failure to perform, unless the First-tier Subcontracted supplies or services were obtainable from other sources in sufficient time for the Subcontractor to meet the required delivery schedule.
- (e) If this Subcontract is terminated for default, JPL may require the Subcontractor to transfer title and deliver to JPL, as directed by JPL, any (i) completed supplies, and (ii) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and Subcontract rights (collectively referred to as "manufacturing materials") that the Subcontractor has specifically produced or acquired for the terminated portion of this Subcontract. Upon direction of JPL, the Subcontractor shall also protect and preserve property in its possession in which JPL or the Government has an interest.
- (f) JPL shall pay the Subcontract price for completed supplies delivered or services rendered and accepted. The Subcontractor and JPL shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. JPL may withhold from these amounts any sum JPL determines to be necessary to protect the Institute or the Government against loss from outstanding liens or claims of former lien holders.
- (g) If, after termination, it is determined that the Subcontractor was not in default, or that the default was excusable, the termination shall be deemed to be a termination for convenience.
- (h) The rights and remedies of JPL in this Article are in addition to any other rights and remedies provided by law or under this Subcontract.

TOXIC CHEMICAL RELEASE REPORTING

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A-E, RSA – 09/04] [FAR 52.223-14 – 10/00]

(This Article is applicable to all Subcontracts where the value of the Subcontract and all options at the time of award is expected to exceed \$100,000.)

By entering into this Subcontract, the Subcontractor agrees to abide by and accept all of the Terms and Conditions found in the Federal Acquisition Regulations (FAR) at 52.223-14.

TRANSFER OF TECHNICAL DATA UNDER SPACE STATION INTERNATIONAL AGREEMENTS

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A-E – 09/04] [NFS 1852.227-87 – 04/89]

(This Article applies to Subcontracts and First-tier Subcontracts in support of Space Station program activities that may involve transfer of technical data subject to the International Traffic in Arms Regulations, 22 CFR parts 120 through 130, or the Export Administration Regulations (EAR), 15 CFR PARTS 730-799 in accordance with the NASA Export Control Program.)

- (a) In the cooperative Space Station Freedom Program, NASA has the authority to provide to the international partners all information necessary to implement the multilateral Space Station Intergovernmental Agreement and the Space Station Memoranda of Understanding. NASA is committed under these Space Station agreements to provide its international Space Station partners with certain technical data that are subject to the U.S. export control laws and regulations. NASA will have obtained any necessary approvals from the Department of State for the transfer of any such technical data. Space Station Subcontractors, acting as agents of NASA under the specific written direction of the Contracting Officer, or designated representative, require no other separate approval under the International Traffic in Arms Regulations (ITAR).
- (b) The Subcontractor agrees, when specifically directed in writing by the JPL Subcontracts Manager or an authorized JPL representative under this Subcontract, acting upon the written direction of the NASA Contracting Officer or designated representative, to transfer identified technical data to a named foreign recipient, in the manner directed. No export control marking should be affixed to the data unless so directed. If directed, the text of the marking to be affixed will be furnished by NASA through the JPL Subcontracts Manager or an authorized JPL representative under this Subcontract.
- (c) It should be emphasized that the transfer is limited solely to those technical data which NASA specifically identifies and directs the Subcontractor to transfer in accordance with paragraph (b), above, and that all other transfers of technical data to foreign entities are subject to the requirements of the U.S. export control laws and regulations.
- (d) Nothing contained in this Article affects the allocation of technical data rights between NASA and the Subcontractor or any First-tier Subcontractors as set forth in the "Rights in Data" Article of this Subcontract, nor the protection of any proprietary technical data that may be available to the Subcontractor or any First-tier Subcontractor under that Article.
- (e) The Subcontractor agrees to include this Article, including this paragraph (e), in all First-tier Subcontracts hereunder, appropriately modified to reflect the relationship of the parties.

UNION DATA FOR ON-SITE SUBCONTRACTORS

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M – 09/04]

(This Article applies [i] to any time-and-material or labor-hour Subcontract where the work is performed at a JPL-controlled facility and [ii] to any other Subcontract for which any Subcontractor personnel work in residence at a JPL-controlled facility. Work performed outside the United States is exempt from the requirements of this Article.)

The Subcontractor shall provide JPL-requested union information, including union information pertaining to its First-tier Subcontractors, if any, on the "Request for Union Data Regarding On-Site Subcontractors and Their First-tier Subcontractors," set forth below. A copy of this form (sample shown below), filled in, shall be returned to the cognizant Subcontract Managers' attention. Any changes in the data, such as the addition of a new union First-tier Subcontractor, shall be provided to JPL through timely resubmission of the following form:

REQUEST FOR UNION DATA REGARDING ON-SITE SUBCONTRACTORS AND THEIR First-tier
SUBCONTRACTORS

1. Date:
2. Subcontract number:
3. Scheduled Subcontract completion date:
4. Subcontractor name:
5. Total number of on-site personnel:
6. Cognizant Subcontract Manager:
7. First-tier Subcontractors under this Subcontract with union personnel working on-site at JPL-controlled facilities.

Number of First-tier Subcontractor Personnel at JPL Site:

- | First-tier Subcontractor | Total Personnel | No. of Union Personnel |
|---|-----------------|------------------------|
| 8. Brief description of scope of work and location of work site sufficient to locate the union Subcontract and First-tier Subcontract workers. | | |
| 9. a. Local union name: | | Local No. (if any): |
| b. Number of on-site Subcontractor/First-tier Subcontractor personnel represented: | | |
| c. Name, phone number and address of business agent representing the local union: | | |
| (1) Name: | | |
| (2) Phone: | | |
| (3) Address: | | |
| d. Expiration date of labor agreement: | | |
| e. (1) If applicable, the employer association responsible for negotiating each agreement for Subcontractor/First-tier Subcontractor: | | |
| (2) If applicable, the names of Subcontractor's/First-tier Subcontractor's local employer representatives who take part in such negotiations: | | |
| 10. Name, phone number and address of the Subcontractor's First-tier Subcontractor's representative who is responsible for handling labor relations/human resources issues: | | |
| a. Name: | | |
| b. Phone: | | |
| c. Address: | | |

(Note: For items 8, 9, and 10, provide for each union and also for each on-site First-tier Subcontract, as applicable.)

USE OF RURAL AREA SMALL BUSINESSES

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, RSA – 09/04] [NFS 1852.219-74 – 09/90]

(Work performed outside the United States is exempt from the requirements of this Article.)

Incorporate by reference NFS 1852.219-74, Use of Rural Area Small Businesses.

UTILIZATION OF SMALL BUSINESS CONCERNS

[CT, CIS, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, RSA – 09/04] [FAR 52.219-8 – 10/00]

(This Article is applicable when the Subcontract amount is expected to be over \$100,000, unless (i) a personal services Subcontract is contemplated, (ii) a commercial items or services Subcontract, or (iii) the Subcontract together with all its First-tier Subcontracts is to be performed entirely outside of any State, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.)

Incorporate by reference FAR 52.219-8, Utilization of Small Business Concerns.

WARRANTY

[FP-NR&D – 09/04] [FAR 52.246-17 – 06/03]

- (a) Definitions.

- (1) "Acceptance," as used in this Article, means the act of an authorized representative of JPL by which JPL approves specific supplies or services as partial or complete performance of the Subcontract.
- (2) "Correction," as used in this Article, means the elimination of a defect.
- (3) "Supplies," as used in this Article, means the end item furnished by the Subcontractor and related services required under the Subcontract. The word does not include "data"

(b)

- (1) Notwithstanding inspection and acceptance by JPL of supplies furnished under this Subcontract, or any condition of this Subcontract concerning the conclusiveness thereof, the Subcontractor warrants that all supplies furnished:
 - (A) Are of a quality to pass without objection in the trade under the Subcontract description;
 - (B) Are fit for the ordinary purposes for which the supplies are used;
 - (C) Are within the variations permitted by the Subcontract, and are of an even kind, quality, and quantity within each unit and among all units;
 - (D) Are adequately contained, packaged, and marked as the Subcontract may require; and
 - (E) Conform to the promises or affirmations of fact made on the container.
- (2) When return, correction, or replacement is required, transportation charges and responsibility for the supplies while in transit shall be borne by the Subcontractor. However, the Subcontractor's liability for the transportation charges shall not exceed an amount equal to the cost of transportation by the usual commercial method of shipment between the place of delivery specified in this Subcontract and the Subcontractor's plant, and return.
- (3) Any supplies or parts thereof, corrected or furnished in replacement under this Article, shall also be subject to the terms of this Article to the same extent as supplies initially delivered.
- (4) Aside from the expressed warranties of this Article, any other implied warranties of merchantability and the implied warranty of "fitness for a particular purpose" are excluded from any obligation contained in this Subcontract.

(c) Remedies Available to JPL.

- (1) In the event of a breach of the Subcontractor's warranty in paragraph (b)(1) of this Article, JPL may, at no increase in Subcontract price:
 - (A) Require the Subcontractor, at the place of delivery specified in the Subcontract (irrespective of the f.o.b. point or the point of acceptance) or at the Subcontractor's plant, to repair or replace, at the Subcontractor's election, defective or nonconforming supplies; or
 - (B) Require the Subcontractor to furnish at the Subcontractor's plant the materials or parts and installation instructions required to successfully accomplish the correction.
- (2) If JPL does not require correction or replacement of defective or nonconforming supplies or the Subcontractor is not obligated to correct or replace under paragraph (b)(3) of this Article, JPL shall be entitled to an equitable reduction in the Subcontract price.
- (3) JPL shall notify the Subcontractor in writing of any breach of the warranty in paragraph (b) of this Article within 60 days after discovery of the defect. The Subcontractor shall submit to JPL a written recommendation within 30 days as to the corrective action required to remedy the breach. After receipt of the Subcontractor's recommendation for corrective action, JPL may, in writing, direct correction or replacement as in paragraph (c)(1) of this Article, and the Subcontractor shall, notwithstanding any disagreement regarding the existence of a breach of warranty, comply with this direction. If it is later determined that the Subcontractor did not breach the warranty in paragraph (b)(1) of this Article, the Subcontract price will be equitably adjusted.
- (4) If supplies are corrected or replaced, the period for notification of a breach of the Subcontractor's warranty in paragraph (c)(3) of this Article shall be 60 days after discovery of the defect.
- (5) In no event shall the Subcontractor be liable to the Institute for consequential damages resulting from: i) general or particular requirements and needs of the Institute which the Subcontractor at the time of

Subcontracting had reason to know and which could not reasonably be prevented by cover or otherwise; or
ii) injuries to persons or property proximately resulting from any breach of warranty.

- (6) The rights and remedies (or limitations thereof) provided in this Article are in addition to and do not limit any rights afforded by any other Article of this Subcontract.
- (d) As contemplated by paragraph (b) of this Article, the Subcontractor warrants the supplies furnished under this Subcontract for a period of time, as specified in the Subcontract Schedule, from the date of delivery, or if no time period is so specified then for the period(s) for which the Subcontractor customarily warrants the supplies for its commercial customers.
- (e) The Subcontractor shall provide JPL with a copy of any standard warranty which is normally offered on a commercial product deliverable under this Subcontract. This warranty shall be deemed to be incorporated by reference and JPL shall be entitled to all rights under such warranty in addition to the provisions of this Article; however, such commercial warranty shall not be construed as limiting JPL's rights under this Article.



Jet Propulsion Laboratory
California Institute of Technology
4800 Oak Grove Drive
Pasadena, California 91109-8099
(818) 354-4321

RELEASE OF INFORMATION

This Subcontract with the Jet Propulsion Laboratory (JPL) constitutes a First-tier Subcontract under a prime contract between the California Institute of Technology and the National Aeronautics and Space Administration (NASA). It is NASA's policy to provide the widest practical dissemination of information on all of its activities. Since 90% of NASA's research and development effort is performed by private industry, Subcontractors and First-tier Subcontractors have played a large role in this process.

In accordance with this policy, the Subcontractor may want to issue press releases or plan publicity and advertising from time to time, and the Subcontractor will be expected to respond to queries from information media.

Close coordination in all of these matters is required, and JPL requires that all materials (e.g., news and photo releases, exhibit copy, motion picture scripts, advertising copy) directly related to the Subcontractor's work with and for JPL be reviewed by JPL for technical accuracy prior to issuance or use.

To expedite this review, the Subcontractor shall send the materials to the JPL Media Relations Office, mail stop 186-120, stating the Subcontractor's deadlines and referencing this Subcontract number.

In the event this Subcontract is a cost-reimbursement type Subcontract, review by JPL shall not constitute approval for reimbursement of expenditures made in connection with publicity or advertising releases. Any such expenditures remain subject to applicable cost principles.

Nothing contained herein shall be deemed to change existing requirements relating to the release of classified information.

NOTIFICATION TO PROSPECTIVE SUBCONTRACTORS OF JPL'S ETHICS POLICIES AND ANTI-KICKBACK HOT LINE

JPL is committed to conducting its business in accordance with the highest standards of ethics and integrity. In this regard, we have an on-going orientation and training program to assure that every JPL employee is aware of this commitment and their individual responsibility for compliance. We must rely on the personal integrity of our employees and the integrity and cooperation of our suppliers and Subcontractors to make sure that these high standards are maintained.

The policies that implement our standards of business conduct state clearly that no employee may solicit or accept any "kickback," gift, gratuity, entertainment, compensation, or favors of any kind from any supplier/Subcontractor or prospective supplier/Subcontractor to JPL. Our policies make it clear that these standards not only apply to procurement personnel but also to employees in all functions and at all levels.

The purpose of this letter is to make sure that you and your employees are aware of our policies, and that together we can achieve and maintain excellence in the conduct of our business relationships.

In the unlikely event that any JPL employee ever attempts to solicit a "kickback," please notify us immediately. JPL has established an Anti-Kickback Hot Line number, **(818) 354-9999**. Please feel free to call this number collect. The information you provide will be handled with confidentiality, investigated thoroughly, and appropriate action taken.

Thank you for your cooperation and support in this important matter.



Certifications

(NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.)

I. CERTIFICATION OF NONSEGREGATED FACILITIES

- (a) "Segregated facilities," as used in this provision, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise.
- (b) By the submission of an offer, the offeror certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The offeror agrees that a breach of this certification is a violation of the Equal Opportunity clause in the Subcontract.
- (c) By submission of the offer, the offeror further agrees that (except where it has obtained identical certifications from proposed First-tier Subcontractors for specific time periods) it will:
 - (1) Obtain identical certifications from proposed First-tier Subcontractors before the award of First-tier Subcontracts under which the First-tier Subcontractor will be subject to the Equal Opportunity clause;
 - (2) Retain such certifications in its files; and
 - (3) Forward this certification and the following notice to the proposed First-tier Subcontractors:

NOTICE TO PROSPECTIVE FIRST-TIER SUBCONTRACTORS OF REQUIREMENT FOR CERTIFICATION OF NONSEGREGATED FACILITIES

A Certificate of Nonsegregated Facilities must be submitted before the award of a First-tier Subcontract under which the First-tier Subcontractor will be subject to the Equal Opportunity clause. The certification may be submitted either for each First-tier Subcontractor for all First-tier Subcontracts during a period (i.e., quarterly, semi-annually, or annually).

- (d) By commencing performance of the Subcontract work, the selected Subcontractor certifies to the Nonsegregated Facilities provisions above.

II. CERTIFICATION OF ANTI-KICKBACK COMPLIANCE

(A Certification of Anti-Kickback Compliance must be submitted prior to award.)

By submission of an offer, the offeror certifies that it has read the General Provision entitled "Anti-Kickback Procedures," contained in the solicitation and that neither it nor any of its employees has performed or participated in any prohibited actions, as defined in that provision, relating to the award of the Subcontract. By commencing performance of the Subcontract work, the selected Subcontractor certifies to Anti-Kickback Compliance.

III. CERTIFICATION OF AMERICANS WITH DISABILITIES ACT COMPLIANCE

(The Subcontractor represents and certifies the following as part of its offer.)

By submission of an offer, the offeror certifies that it complies with the Americans with Disabilities Act, 42 U.S.C., 12101 et. seq., and will maintain compliance throughout the life of this Subcontract. By commencing performance of the Subcontract work, the selected Subcontractor certifies to the Americans with Disabilities Act compliance.

IV. CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS

(The following certification applies to all offers and awards in excess of \$100,000.)

- (a) The definitions and prohibitions contained in the General Provision Article "Limitation on Payments to Influence Certain Federal Transactions" are hereby incorporated by reference in paragraph (b) of this Certification.
- (b) By submission of an offer, the offeror certifies to the best of his or her knowledge and belief that on or after December 23, 1989:
 - (1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal Subcontract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal Subcontract, grant, loan, or cooperative agreement;
 - (2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the Offeror shall complete and submit, with its offer, OMB Standard Form LLL, "Disclosure of Lobbying Activities," to the JPL Subcontracts Manager; and
 - (3) He or she will include the language of this Certification in all First-tier Subcontract awards at any tier and require that all recipients of First-tier Subcontract awards in excess of \$100,000 shall certify and disclose accordingly.
- (c) Submission of this certification and disclosure is a prerequisite for making or entering into this Subcontract imposed by Section 1352, Title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to civil penalty of not less than \$20,000 and not more than \$100,000, for each such failure.

V. CERTIFICATION OF FULL DISCLOSURE BY THE SUBCONTRACTOR/OFFEROR REGARDING WHETHER IT ANTICIPATES BEING OR IS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT BY THE U.S. FEDERAL GOVERNMENT AT TIME OF AWARD

(This certification applies to Subcontracts with a Subcontract value exceeding \$25,000.)

- (a) By submission of an offer, the offeror certifies that it has provided full disclosure in writing to JPL whether as of the anticipated time of award of any Subcontract resulting from the solicitation, it anticipates that it or its principals will be debarred, suspended, or proposed for debarment by the U.S. Federal Government.
- (b) By commencing performance of the Subcontract work, the selected Subcontractor certifies that it has made full disclosure to JPL in writing as to whether as of the time of award it or any of its principals is debarred, suspended, or proposed for debarment by the U. S. Federal Government. (see FAR 9.404 for information on the List of Parties Excluded from Procurement Programs).

VI. CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING

(This certification is required prior to award of a Subcontract with an estimated value, including any options, over \$100,000.)

- (a) Submission of this certification is a prerequisite for making or entering into this Subcontract imposed by Executive Order 12969, August 8, 1995.

- (b) By submission of an offer, the offeror certifies that it has accepted and certifies to all the Terms and Conditions found in the Federal Acquisition Regulation (FAR) at 52.223-13.

**VII. CERTIFICATION REGARDING SUBCONTRACTOR REPRESENTATION BY
FORMER CALTECH/JPL EMPLOYEES**

(The Subcontractor represents and certifies the following as part of its offer.)

By submission of an offer, the offeror certifies that it has no previous JPL or Caltech employee involved in this procurement who has been gone from JPL for less than one year, who participated personally and substantially in the subject matter while working for JPL or Caltech, who was officially responsible for the subject matter while working for JPL or Caltech, and who owns or represents the proposer's organization.



ASBESTOS NOTIFICATION

The Jet Propulsion Laboratory is committed to providing a safe and healthy work environment for all personnel.

In the past several years, the Laboratory management, working through the JPL Safety Operations Section - Industrial Hygiene and Workers Compensation Group (SOS - IHWC) and the Facilities Division, has had an on-going program of asbestos identification and control. This program has included bulk sampling, air monitoring, and training for members of the Facilities and Maintenance staff.

Through this program, some of the buildings at JPL have been identified to contain friable sprayed-on fireproofing above the ceilings. At the Oak Grove site, these buildings include 167, 168, 169, 179, 180, 183, 186, 230, 238, 264 and 291, and at the Foothill site, buildings 502, 506 and 507. Asbestos may be present in other JPL buildings in other various forms, including, but not limited to: transite, thermal system insulation, roofing products, ceiling tiles, spray-applied acoustical ceiling, wall materials, and floor tiles/linoleum/mastic.

The majority of asbestos at JPL is located in restricted access areas, such as mechanical rooms, boiler rooms and attics. It is in generally good condition and does not pose a hazard during normal operations.

The SOS-IHAWC staff has taken numerous air samples in JPL buildings. Sampling results indicate that airborne asbestos levels in the buildings are well below regulatory limits and are lower than those found in industrial workplaces where adverse health effects have been observed. Fiber levels in JPL buildings are not significantly different than fiber levels found outside.

Asbestos-containing materials do not pose a health hazard, unless the fibers become airborne. Subcontractor maintenance/construction/renovation activity involving intentional or accidental contact with friable materials can release fibers; therefore, only authorized and properly trained personnel are permitted to perform work that may disturb asbestos materials.

General written procedures and handling restrictions have been provided to JPL and Subcontractor personnel. SOS-IHAWC must be given notification and, if deemed necessary, a written description of any asbestos-related work to be conducted in areas where asbestos may be present prior to the initiation of activities. The work to be performed will determine if these areas must be tested and cleared. SOS-IHAWC will review sampling results and documentation after completion of Subcontractor activities prior to occupancy.

Pursuant to the California Health and Safety Code (Chapter 10.4, Section 25915), each employee has the right to review all reports about surveys, bulk sampling and air sampling. These reports are available for review during normal business hours. Contact SOS-IHAWC at extension 4-1771 to review these documents or if there are any questions.

Notice of Potential Tax Withholding

JPL is legally obligated to withhold federal and/or state income tax from certain contractor and consultant payments when required by law. Withholding may be required under the following circumstances:

1. Nonresident Independent Contractor/Consultant State Source Income Tax

Payments made to California nonresident contractors or consultants, including sole proprietors, corporations, limited liability companies, and partnerships, that do not have a permanent place of business in CA, or that are not registered to do business in California, are subject to a seven percent state income tax withholding for services performed in California. No withholding is required on payments for goods, or for services performed outside California. See State Tax Form 587 (Nonresident Income Allocation Worksheet) and Form 590 (Withholding Exemption Certificate).

2. Nonresident (and Resident) Alien Federal Income Tax

Payments made to nonresident alien contractors/consultants are subject to a thirty percent federal income tax withholding for services performed in the U.S. unless an exception applies. A nonresident alien from a country with an income tax treaty with the United States may be exempt from tax under the Self-employment Article of the treaty if the individual satisfies the conditions of the treaty article. A nonresident alien from a non-treaty country may claim a daily personal exemption amount. Such nonresident aliens who have a U.S. taxpayer identification number (TIN) – either a U.S. Social Security Number or Individual Taxpayer Identification Number - can submit Federal Tax Form 8233 (Exemption From Withholding on Compensation for Independent Personal Services of a Nonresident Alien Individual) to claim a withholding reduction or exemption. No exemption is available for nonresident aliens who lack a TIN. Nonresident aliens not claiming such an exemption should submit Federal Form W-8BEN (Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding). For more information, refer to IRS Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities.

Resident aliens should complete Federal Form W-9 (Payer's Request for Taxpayer Identification Number and Certification) to submit a U.S. taxpayer identification number. Resident aliens with no U.S. taxpayer identification number will be subject to back-up withholding, currently at a rate of twenty-five percent.

3. Federal or State Tax Liens or Levies

JPL may be required to withhold payments in an amount necessary to satisfy tax liens or levies or judgments duly issued against contractors or consultants by cognizant tax or judicial authorities.

Disclaimer: JPL is not liable for amounts incorrectly withheld. However, if JPL determines that amounts have been incorrectly withheld, and provided that such amounts have not been remitted to tax authorities, JPL shall refund such amounts to the contractor/consultant.